Riley-Beaird, Inc. *and* **International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.** Cases 15-CA-7582, 15-CA-7621-1, 15-CA-7621-2, 15-CA-7621-3, 15-CA-7697, 15-CA-7730, and 15-CA-7736

February 3, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 6, 1981, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, the Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[1] and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified below.

In agreement with the General Counsel, and in order to fully remedy the unfair labor practices committed herein, we shall order that the Respondent notify employees Arnold, Sanders, Stamper, Crowder, Grant, Broden, and Hall, in writing, that it has removed and expunged the unlawful written warnings, unexcused absences, adverse personnel actions, and references thereto from their personnel files. We further agree with the General Counsel that a broad cease-and-desist order is warranted in this case. This is not the first case involving unfair labor practices committed by the Respondent in connection with the Charging Party's organizational campaign[3] and the nature of the unfair labor practices committed herein demonstrates not only the Respondent's proclivity to violate the Act, but its general disregard for its employees' fundamental statutory rights.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Riley-Beaird, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 1(l):

"(l) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to act together for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities."

2. Insert the following as paragraph 2(d), relettering subsequent paragraphs accordingly:

"(d) Notify employees Lynn A. Arnold, Willie D. Broden, Willie D. Crowder, J. R. Grant, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper, in writing, that it has taken the action required by paragraph 2(c)."

3. Substitute the attached notice for that of the Administrative Law Judge.

[1] The General Counsel's motion to correct the record, which was unopposed, is granted.

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In regard to violations where the Administrative Law Judge rejected the Respondent's asserted justifications as pretextual, Member Jenkins does not rely on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). In his view, *Wright Line* and its progeny concern identifying the cause of discharge where a genuine lawful and a genuine unlawful reason exist. Where the asserted lawful reason is found to be a pretext, only one genuine reason remains—the unlawful one. Thus, the *Wright Line* analysis is not pertinent to cases of pretext.

[3] See *Riley-Beaird, Inc.*, 253 NLRB 660 (1980).

[4] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT unlawfully ask you about your activities or the activities of other employees on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization.

WE WILL NOT unlawfully ask you about unfair labor practice charges you file against us with the National Labor Relations Board.

WE WILL NOT create the impression that we have under surveillance your activities on behalf of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, by telling you that a supervisor has been instructed to observe such activities.

WE WILL NOT unlawfully threaten to file charges against you because you make and keep notes concerning your work and events at work.

WE WILL NOT illegally threaten to discharge you because you make and keep notes concerning your work and events at work.

WE WILL NOT unlawfully charge you with unexcused absences to penalize you for being absent from work in order to give testimony at a proceeding of the National Labor Relations Board.

WE WILL NOT assign you to harder and less desirable work, subject you to stricter supervision, require you to follow plant rules more closely, restrict you in communicating with your fellow employees, or warn, suspend, or discharge you because you support International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, or because you file charges or give testimony under the National Labor Relations Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in your exercise of the rights guaranteed you under Section 7 of the National Labor Relations Act.

WE WILL remove from our records and destroy all copies of and references to certain warnings issued in 1980 to Lynn A. Arnold, Willie Broden, Willie D. Crowder, J. R. Grant, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper; and WE WILL notify each of them, in writing, that we have done so.

WE WILL offer Lynn A. Arnold, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper immediate and full reinstatement to their former positions of employment or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make Lynn A. Arnold, Willie D. Crowder, and Willie Hall, Jr.. whole, with interest, for any loss of pay they may have suffered as a result of their suspensions or discharge in 1980.

RILEY-BEAIRD, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: These consolidated cases were heard before me in Shreveport, Louisiana, during August 4-8 and 27-29, 1980,[1] pursuant to an initial complaint, dated March 14, two subsequent consolidated complaints, and various amendments thereto,[2] issued by General Counsel of the National Labor Relations Board through the Regional Director for Region 15. The consolidated complaints, as amended, are based on charges filed by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO[3] (the Union), against Riley-Beaird, Inc. (Respondent).

In the consolidated complaints, as amended, General Counsel alleges that Respondent violated Section 8(a)(1), (3), and (4) of the Act by, among other conduct, reprimanding and transferring certain employees; by suspending employees Lynn A. Arnold, Willie L. Crowder, and Willie Hall, Jr.; and by discharging Willie Hall, Jr.

By its answers, as amended, Respondent admits certain allegations, but denies that it has violated the Act in any manner.

Upon the entire record,[4] including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by each of the parties, I make the following:

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[1] Unless otherwise indicated, all dates involved herein occurred in 1980.

[2] Aside from minor amendments made at, or shortly before, the hearing, the preferred practice is that subsequent cases and allegations be incorporated into a single consolidated complaint when the case submitted at the hearing is spread over numerous documents. The parties, and particularly the Administrative Law Judge, frequently are distracted by having to flip through the several complaints and amendments in order to locate relevant allegations.

[3] *Sua sponte*, I have corrected the name of the Union (separating "Ship" and "Builders" and spelling "and") so as to conform to the spelling appearing in the charges and in the Union's brief.

[4] The unopposed motion, dated October 24, 1980, of counsel for General Counsel to correct the transcript is hereby granted.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation headquartered in Shreveport, Louisiana, fabricates various heavy steel products, including pressure vessels, at its Shreveport, Louisiana, facility.[5] During the past 12 months, Respondent purchased and received, at Shreveport, Louisiana, goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana. Respondent admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. UAW's 1977 campaign

Although the record discloses only sketchy information on the subject, it appears that in the summer of 1977 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), conducted an organizing campaign among Respondent's employees. The extent and duration of the UAW's efforts are facts not available, but apparently the campaign did not proceed to a Board-conducted election. The principal relevance of this campaign relates to the case of dischargee Willie Hall, Jr.

In July and August 1977, UAW filed charges on behalf of Hall alleging that on June 6, 1977, Respondent transferred Hall from the midnight shift to the first shift and thereafter reprimanded him because of his activities on behalf of UAW. The Region dismissed the charges, and UAW's appeal to General Counsel was denied in October 1977 (G.C. Exh. 20). Respondent apparently returned Hall to the midnight shift on August 15, 1977.

In the instant case, the subject of the 1977 charges was mentioned in a significant meeting Hall attended with, and at the summons of, several of Respondent's officials. Such meeting is discussed below in the treatment of Hall's case.

2. Boilermakers' 1977–80 campaign

Al Washington, Jr., an International representative of the Union, testified that the Union began an organizational campaign among Respondent's employees in 1977. An election petition was filed in Case 15–RC–6501, apparently about late August 1979, and a Board-conducted election was held on October 4, 1979. As reflected by the tally of ballots served on the parties, out of a unit of approximately 896 employees, the Union fell some 16 votes short of securing a majority.[6] the Union filed timely objections alleging that Respondent's conduct improperly affected the election results. It also filed an unfair labor practice charge, Case 15–CA–7436, alleging parallel violations of Section 8(a)(1) of the Act by such conduct of Respondent. Complaint issued November 27, 1979, on certain allegations, and Cases 15–CA–7436 and 15–RC–6501 were consolidated for a hearing.

3. *Riley-Beaird, Inc.*, 253 NLRB 660 (1980)

The foregoing 8(a)(1) allegations and election objections came before Administrative Law Judge David L. Evans on February 4 and 5, 1980, in Shreveport, Louisiana. Administrative Law Judge Evans issued his Decision (G.C. Exh. 31) on August 13, 1980, and on December 10, 1980, the Board, finding an additional 8(a)(1) violation involving Supervisor M. O. Green, adopted Administrative Law Judge Evans' Decision. (235 NLRB 660 (1980)). I take administrative notice of such Decision, findings, and conclusions therein. In that Decision, Respondent is found to have violated Section 8(a)(1) of the Act by impliedly threatening plant closure and reduction of benefits if employees selected the Union as their representative. Additionally, Supervisor Green is found to have unlawfully solicited and remedied grievances regarding Cecil M. Sanders. The Board also granted the Union's request to withdraw its election objections in Case 15–RC–6501.

What makes the Decision of significant relevance is that of the seven alleged discriminatees herein, five[7] testified on behalf of General Counsel before Administrative Law Judge Evans. Therefore, the asserted incidents of discrimination against these five are alleged herein as violations of Section 8(a)(4) as well as Section 8(a)(3). It appears from the Decision that Vernon Huffaker is the only other employee who testified on behalf of General Counsel at the February hearing.

4. Contentions of the parties

General Counsel and the Union contend that Respondent, angered by the testimony against it by Arnold and the other employees at the February hearing before Administrative Law Judge Evans, retaliated against the alleged discriminatees herein by discharging Hall, and generally making life as miserable as possible for the others. This had a twofold purpose, they argue. First, the retaliation punished the ones (except Huffaker, who is not an alleged discriminatee) who testified, and secondly, it also serves as a constant and vivid warning to all other employees concerning what they can expect if they incur Respondent's enmity by assisting the government as well as supporting the Union.

Respondent denies any wrongdoing or unlawful purpose. At the hearing, it offered numerous and detailed exhibits, in addition to testimonial evidence, in support of its position that the transfers of Arnold and others were

[5] Respondent has been a wholly owned subsidiary of the Riley Company, based in Chicago, Illinois. More recently, Respondent has been owned by U. S. Filter, Inc., which has its home office in New York, New York.

[6] Of 862 valid ballots, 438 were against the Union, 424 were cast for the Union, and 1 was challenged.

[7] Lynn A. Arnold, Willie D. Crowder, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper.

for economic reasons only, and that the discipline imposed on Arnold, Hall, and the other alleged discriminatees was consistent with past practice and justified by their work mistakes.

B. *Independent 8(a)(1) Allegations*

There are four allegations of independent 8(a)(1) violations. Two appear as paragraphs 15 and 16 in the second complaint (a consolidated complaint dated April 28, 1980) concerning an alleged interrogation and threat on March 31. Willie Hall, Jr., testified concerning that event.

Willie D. Broden testified in support of the remaining two allegations which appear in the July 1, 1980, "Amendments" to the third complaint (the consolidated complaint of June 25, 1980). The July 1 "Amendments" adds paragraph 11A, with subparagraphs 11A(a) alleging an impression of surveillance on May 10 and 11A(b) alleging an interrogation on such date.

C. *Allegations of 8(a)(3) and (4) Violations*

1. *Introduction*

In their briefs, General Counsel and the Union contend that shortly after the February hearing Respondent launched its campaign of retaliation against General Counsel's witnesses by reassignments and transfers to more onerous and less desirable jobs as well as by disciplining them for fabricated reasons and for mistakes of a kind previously tolerated.

Countering with its own evidence, Respondent asserts that the reassignments and transfers were for the purpose of reducing "x-ray rejects,"[8] and that the discipline, as previously noted, was consistent with past practice and otherwise justified.

William M. Bradshaw, Respondent's vice president of manufacturing, testified that in June 1979, following an expression of concern about quality and excessive cost by Company President Bill Adams, he began a drive to improve quality. As a result, production departments, or welding bays, adopted goals. The goal for X-ray rejects was an overall maximum of 3 percent. The same goal was reset in July 1980. Reduction of spoilage (caused by improper welds) was another goal. Both goals, of course, are designed to cut costs through improved quality and work proficiency. Bradshaw testified that Respondent began tightening up in these areas in June 1976. The Company's fiscal year ends on each June 30, and according to Bradshaw, the X-ray reject rate was 4.7 percent for the fiscal year ending June 30, 1979.

Bradshaw testified that progress toward achieving the goals was lagging. He therefore wrote a memo (Resp. Exh. 10), dated December 14, 1979, to Tank and Structural Superintendent E. C. Greene on the subject of weld rejects in bay 5, reading as follows:

> Look at the record for the last year on Bay 5 weld rejects. We are around 9% average in this Bay, all other Bays have made improvements in this area and are meeting their goals. Our plant average is good at the present time. If you need to move supervisors, welders, etc. do whatever is necessary to make improvement.
>
> You are charged with the responsibility to take whatever action is necessary. Keep me posted on your progress.

Greene testified that, on receipt of the memo, he called in Bay 5 General Foreman Rupert Sepulvado[9] and gave him 30 to 45 days to show an improvement regarding the reject percentage. Should no progress be made in the allotted time, Greene told Sepulvado that "[W]e are going to change personnel in that area, and supervision, if necessary. If we got to put a completely new crew of men in that department, then that is what we are going to do. But, we are going to get the X-rays down where they should be."

Greene further testified that at the end of January the reject rate was still around 8 to 9 percent (in Bay 5), so in the first week of February he and his general foreman began discussing moving employees from bay 5.[10] Greene initially asked several general foremen if they had any "good" individuals they would volunteer to send to bay 5 on a man-to-man swap by qualification (i.e., a first-class welder for a first-class welder). Naturally, as Greene testified, none wanted to give up qualified employees who were doing a "good job."

Receiving no volunteers, Greene testified that he stated he would have to take people. He told Sepulvado to select (apparently a certain number of employees) for transfer from bay 5, and Greene would obtain from other general foremen employees whom they had selected for transfer from their bays.[11] Thus, while the general foreman selected the transferees, Greene decided which selectee would be transferred to which bay. On cross-examination, he testified that the decision regarding the selections and transfers was finalized on Friday, February 8, and that the implementation began the following week.

2. Preview of conclusions

As appears below, I find and conclude that General Counsel has established a *prima facie* case of unlawful conduct, and that Respondent has failed to carry its *Wright Line*[12] burden of rebutting such *prima facie* case.

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[8] A term which refers to the quality control procedure in which welding mistakes discovered in the routine X-ray procedure are rejected and returned for repair and correction.

[9] Sepulvado testified that he has been general foreman over bays 5, 6, and 13 at least since January 1979.

[10] A general foreman often is in charge of more than one bay. Under the general foreman is a bay foreman and under the foreman are several leadmen. All are admitted statutory supervisors.

[11] Quite obviously, this procedure would result in bay 5 receiving welders who were considered as something less than the best by the selecting general foremen. While it is true that a first-class welder, for example, might be traded for another person possessing the same first-class welding certification, common experience would recognize that while all high school graduates get the same kind of diploma, some graduates are "A" students, some are "B," and some are "C." Common experience shows that some people are more proficient than others in the same classification. Greene admitted this when he testified that he asked his general foreman to volunteer "good" men to be swapped within the same classification.

[12] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

For example, in relation to consideration of General Counsel's contention that *timing* (i.e., the alleged discriminatory acts following almost immediately after the February hearing) serves here as an indicium of unlawful motivation, I have considered, among other evidence, Respondent's Exhibit 44. This 12-page exhibit[13] is a list of employees who were issued written warnings for the years 1976 through July 1980. A statistical analysis of the exhibit reveals the fact that the number of warnings for 1980 increased by an astonishing 86 percent over the previous 4-year average.[14] Thus:

	1976	*1977*	*1978*	*1979*	*1980*
Jan.	5	2	12	16	6
Feb.	5	2	8	16	19
Mar.	2	9	10	6	17
Apr.	18	6	17	7	17
May	21	11	10	7	29
Jun.	6	5	7	1	10
Jul.	12	12	2	4	15
Aug.	9	6	15	15	0
Sep.	6	6	5	5	0
Oct.	7	6	19	3	0
Nov.	7	5	7	16	0
Dec.	8	8	15	8	0
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	106	78	127	104	113

Average for 4 years of 1976-79—103.75
Projected number for 1980 at 16.142 per month (113 plus 80.7 divided by 12)—193.71
Approximate 1980 increase over 4-year average—86 percent[15]

Furthermore, in this case, I find the demeanor of the witnesses to be an important factor. As appears below, based largely on the factor of demeanor, I credit General Counsel's witnesses over those of Respondent. At this point I shall note that some of Respondent's witnesses, particularly Greene and General Foreman Frank Booker, appeared quite hostile during their questioning by General Counsel. General Foreman Sepulvado was evasive at times. In contrast, the alleged discriminatees, despite the adverse, as I find, nature of the job conditions they have been subjected to, exhibited an appearance of a sincere effort to cooperate in the questioning by all parties.

3. The discrimination against Arnold, Sanders, and Stamper

a. *Sanders' unexcused absences*

When his supervisor, Harvey Reynolds, gave Cecil M. Sanders his paycheck the evening of January 31, Sanders told Reynolds that he had a subpena to appear in court on February 4. Reynolds respondend that this would be "okay." James W. Johnston, who was present during this conversation corroborated Sanders completely.

Sanders testified on February 4 and was still present at the hearing pursuant to Board subpena on February 5. He was seen at the hearing on February 5 by M. O. Greene, admitted supervisors/managers William Bradshaw, Hillman Deaton, M.O. Greene, and B. T. Walsworth. Sanders was paid 2 days' witness fees.

Upon returning to work on February 6, Sanders heard that his absences had been unexcused, and he questioned Reynolds about this. Reynolds told Sanders he did not remember his January 31 conversation with Sanders wherein Sanders notified him of his upcoming court appearance, although he did not deny that Sanders so informed him. Sanders then went to General Foreman Rupert Sepulvado the following day and told him that Johnston was present during the January 31 conversation with Reynolds. Sepulvado said he would check it out with Johnston. The following day Sanders asked Sepulvado if he had confirmed his story with Johnston, to which Sepulvado told him "No" and then walked away. Johnston testified that no supervisors had attempted to verify with him whether Sanders told Reynolds about his subpena.

Although testifying in an evasive and confusing fashion on cross-examination, General Foreman Sepulvado appears to have conceded that Foreman Reynolds told him one employee (presumably Sanders) would be testifying at the February hearing. Reynolds did not testify.

Respondent relies upon its Exhibit 45, which reflects that Sanders' absences on both February 4 and 5 were treated and cited as unexcused absences in violation of rule 34. Other names are listed of those who did not call in, and also were cited. However, I credit the testimony of Sanders and Johnston that Sanders did give notice to Foreman Reynolds. Finally, Sepulvado's clear disinterest in checking with Johnston evidences Respondent's unlawful motive in citing Sanders.[16] That Respondent did not cite the witnesses who did call in is not determinative. Thus, Personnel Manager Dillard conceded that if a supervisor excuses an employee, then he is excused. I find the citation to Sanders a violation of Section 8(a)(1), (3), and (4) of the Act, as alleged in paragraph 7 of the March 14 complaint.[17] I shall recommend that Respond-

[13] Not treated by either General Counsel or the Union in their briefs.

[14] Figured by projecting the 7-month average of 16.14 throughout the remainder of 1980.

[15] I further note that only six warnings issued in January 1980, and that the first written warning in February did not issue until after the hearing before Administrative Law Judge Evans. Then the flood gates opened with 19 issuing in February (over three times the number of February 1979). An all-time monthly high (at least since January 1, 1976) of 29 issued in May—more than four times as many as were handed out in May 1979.

[16] In view of Sanders' description in the February hearing of his union activities, I find that Respondent was motivated here not only to retaliate for his testimony, but also because of such union activities.

[17] In any event, I find that citing an employee who is present at a Board proceeding pursuant to a Board subpena with an unexcused absence is inherently destructive of his Sec. 7 rights and thereby violative of Sec. 8(a)(1) and (4). Such a conclusion must be reached particularly where, as here, top officials of Respondent knew of Sanders' February 4 and 5 appearance in court, and where Respondent failed to show that if

Continued

ent expunge the record of unexcused absences from Sanders' personnel records.

b. *Sanders' February 6 job reassignment*

As noted previously, Cecil M. Sanders testified at the February hearing. He was present on both February 4 and 5. A first-class code welder at Respondent's plant for 12 years, Sanders testified that prior to the February hearing he had done automatic welding on the outside of heads (the large semi-coned shaped ends to railroad tank cars) for the past 2 or 3 years. Immediately upon Sanders' return to work on February 6 from the hearing, Leadman Paddie announced in a meeting of all bay 5 employees that Sanders was being moved from welding the outside of heads to the inside, and that employee Curly Cloud was being moved from welding the inside of heads to the outside.[18] Paddie told his bay crew that the reason for the change was that the X-ray rejects were too high and that such rejects were caused by bad welding. He did not explain how this move would bring down the reject percentage or otherwise improve the quality of work.[19]

Instead of Paddie testifying, General Foreman Sepulvado testified that he and the leadman in bay 5 (presumably Paddie) previously had discussed with Sanders the fact that he was experiencing bad welding in the nature of high-weld, undercurrents, and excessive pickups. Moreover, Sepulvado testified that Sanders was less experienced in running the outside machine, and that for these reasons Sanders was moved. Responding to the reasons why the announcement was made to the entire bay on Wednesday rather than at the Monday meeting, Sepulvado testified that it was to "let everybody in the bay know and be aware that we were going to have to move people around in order to get the X-ray percentage down. Either move people to different jobs in the bay or either a possibility of moving employees out of the bay." Contrary to the testimony of Sepulvado, Sanders testified that prior to his reassignment he had never been counseled, warned, disciplined, or in any way spoken to by any of his supervisors about his X-ray reject rate. Indeed, the last time he had been graded, several years previously, all of his marks were good to excellent.

According to the undisputed testimony of both Sanders and Arnold, Sanders' welding ability and reject rate was about equal to that of Cloud's. Of even more significance, Harlan Palmer, who welded the outside of heads on the shift opposite Sanders (that is, they rotated shifts every month) was not moved to welding the inside of heads, yet he had a high X-ray reject rate[20] and Palmer also, had many more "burn-throughs" than did Sanders.[21]

As earlier noted, Sepulvado testified in a reluctant and evasive fashion at various times during his testimony. I do not credit him. In contrast, Sanders and Arnold testified in a straightforward and believable fashion, and I credit their testimony. Accordingly, as alleged in paragraphs 9 and 11 of the first (March 14) complaint, I find that Respondent violated Section 8(a)(1), (3), and (4) of the Act by assigning Cecil M. Sanders on February 6 from welding the outside of heads in bay 5 to the more onerous and less desirable work of welding inside heads in bay 5.[22]

In making this finding, and in crediting Sanders and Arnold over Sepulvado, I have noted the timing of the assignment of Sanders immediately following his return to bay 5 from having testified at the February hearing; the fact that the announcement was made on Wednesday following the hearing rather than at the usual Monday bay meeting; the fact that the announcement was made to everyone rather than to the affected employee himself; and the fact that such assignment appears to have been the only effort to that point by General Foreman Sepulvado to lower the X-ray rejects rate in bay 5 even though the reject rate had been running between 5 and 9 percent for the last few years. I find that the assignment was done for the purpose of publicly punishing Sanders for his union activities and for testifying, and to serve as a warning to other employees that they should not incur the displeasure of Respondent.

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suffered a detriment as a result of his failure to renotify his immediate supervisor by calling in the morning of the hearing. See *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 338 U.S. 26 (1967).

[18] February 6 was a Wednesday. Ordinarily, meetings are held with bay employees at the start of the shift on Mondays. Furthermore, job reassignments of this nature are ordinarily not announced to the whole complement of bay employees but rather are announced privately to the affected employees.

[19] Paddie did not testify. Moreover, Plant Superintendent E. C. Greene, when called as a witness under Fed. R. Evid. 611(c), testified that either Supervisors Truman Cloud, R. L. Paddie, or Harold Stockton would have knowledge of Sanders' February 6 reassignment, yet none of these individuals was called by Respondent to testify.

[20] The employees were able to compare X-ray reject rates of the various employees of bay 5 as a result of a series of postings on the bulletin board showing the X-ray rejects of bay 5 employees. Additionally, part of Arnold's job was to repair the X-ray rejects, and thus he had the work before him and could tell which employees were receiving the most rejects.

[21] Sanders testified that about October 1979 Palmer had 11 burnthroughs in 1 head alone, and that Palmer did not receive a warning. Indeed, Palmer had the nickname among bay 5 employees of "Burnthrough Palmer." Palmer did not testify at the February hearing. The record does not reflect whether Palmer was openly for or against the Union.

[22] Based on the description by Sanders and Arnold regarding the work of welding the inside and outside of heads, or crowns for railroad tank cars, I find that the work of welding on the inside was far more onerous. Welding on the inside, as contrasted to the outside, requires the welder to squat. He had to work in a cramped location, the work often is above his head, not nearly ventilated as the outside, and he chokes on smoke generated when oil mixes with heat from the welding. Moreover, Sanders credibly testified that employees generally work up from inside welding to outside welding. Thus, it is clear that everyone considered welding the inside to be less desirable than the outside. In addition to the physical discomfort an inside welder experiences, the job is also dangerous inasmuch as the welder's head can be caught between the welding machine and stool which could result in serious injury or even death. Sanders testified that one man had his head caught, and several others had their hats caught. Also, he testified that five men who welded the inside of heads had to have back operations. Of course, while Sanders' testimony on this latter point does not establish a medical connection, I do give weight to such testimony insofar as such fact bears on the perception of employees regarding the desirability of the work.

c. *The February 12 transfers of Arnold, Sanders, and Stamper*

(1) Lynn A. Arnold

Lynn A. Arnold testified that as of August 1980 he had been a first-class code welder with Respondent for nearly 14 years, and that this was the classification in which he was hired. Prior to the February hearing, Arnold spent most of his time hand welding on fittings, but sometimes he repaired X-ray rejects. Arnold explained that welding of fittings is more difficult than welding on some of the other work, such as railroad tank car heads, because the former requires laying down layer after layer of welding. The head referred to is the semicone section which goes on each end of a steel railroad car.

In repairing the X-ray rejects (work which had been rejected by quality control after defects were discovered in the routine X-ray process), Arnold could tell which employee had caused the rejects. For that matter, Arnold testified that all employees have rejects. At the time, shortly before the February hearing, the X-ray rejects were running 8 to 9 percent. It is undisputed that Arnold testified at the February hearing, and returned to work on Wednesday, February 6, 1980. Prior to the February hearing, Arnold worked in bay 5.

On February 12, Arnold was summoned to General Foreman Sepulvado's office. Sepulvado stated that X-ray rejects had been "real high" in bay 5 for the last "4 or 5 years," and that the only way Sepulvado knew of reducing the high X-ray reject rate was to move people around, and therefore Arnold was being transferred to bay 8.

Arnold asked why he was being transferred since he was not doing any of the welding where the bad rejects were coming from, that the rejects were coming from the welding on the heads. Arnold testified that very few X-rays or gamma rays were taken of the fittings he welded and consequently it is very seldom that he received a reject. Nevertheless, Sepulvado told Arnold that Arnold was "not thinking x-ray," so therefore Sepulvado had to transfer him from bay 5. Sepulvado said he had no complaints about the quality or quantity of Arnold's work, that both were good, but that Arnold was not thinking X-ray. Arnold testified that subsequent to his transfer to bay 8, he had occasion to observe that the posted X-ray rejects percentage for bay 5 were 39 percent on one job, 30 percent on another, and 18 percent on another—much higher than the previous 8–9 percent average.

Arnold testified without dispute that, prior to his transfer to bay 8, he had never been warned, disciplined, or even counseled by any supervisors about the quantity or quality of his welding, and, indeed, had never received any complaints about his welding. Moreover, he further credibly testified that he had never been counseled, warned, or disciplined regarding the matter of "thinking x-ray." Finally, Arnold testified that the one time he had been graded (some 3 years previously, by Leadman Raymond Paddie) concerning his quantity, quality of work, attitude, attendance record, and safety record, that Paddie had given him a "2" out of a possible "5" (with "1" being the highest). Paddie told him that he wanted to give him a "1," but that General Foreman Sepulvado did not believe anyone should receive a "1" because no one was perfect since there was always room for improvement.

Arnold also testified that Leadman Truman Cloud, as well as Paddie, had told him that he was a good welder. Indeed, only a few days before Arnold's transfer, Paddie utilized Arnold and employee Long to perform the difficult task of welding a 6-1/2-inch thick fitting to a head. Arnold asked Paddie why he always got such jobs (in reference to the job requiring a highly skilled welder), and Paddie told him that Arnold and James Long were the only two people he would trust to put on the job.

As is discussed below, Thomas B. Stamper was also transferred from bay 5 to bay 8 at the same time that Arnold was transferred. While Arnold went to the first shift, Stamper went to the second shift. At the hearing, Superintendent Greene reluctantly admitted that at the time of the transfers of Arnold and Stamper, bay 8 had a reputation of being a "hell hole." Arnold and Stamper were placed on the job of welding blade rings which Greene, again with reluctance, admitted carried the reputation of "hottest and worst" job in the plant. Greene testified that such reputation, while proper several years ago, was no longer justified because of various job improvements. Based on the demeanor and general believability of the witnesses, I credit the testimony of Arnold and Stamper, as discussed below, that the job of welding blade rings is in fact one of the worst jobs in the plant,[23] and I discredit Greene's testimony that as of February 1980 the job had been improved to the point of being one of the "best" welding jobs in the plant, and that of Booker that it is one of the "easiest" jobs. I also find that Arnold's work of welding fittings in bay 5, a job enjoying suitable ventilation and much less heat, was a far easier and more desirable job than that of welding blade rings in bay 8.

The blade rings are heavy metal discs, in the shape of rings or donuts (i.e., with a large opening in the center). Arnold testified that they are heavy and 6 to 8 feet across. Sketches furnished by Respondent disclosed that the rings appear to weigh several hundred pounds each. They are welded 3 to a set.

The reason welding the blade rings is considered by the employees as the worst job in the plant is that the blade rings have to be preheated to between 400 and 450 degrees, and this temperature has to be maintained while the employee welds. This is accomplished with the use of three preheaters which are spaced evenly around the blade ring, and stay on the entire time the welder is welding. Thus, as described by Marable, the welder sits only 5–6 feet from the preheaters during the welding process. Because blade rings are welded with carbon dioxide gas, the job cannot be ventilated, as fans or other

[23] Their testimony is confirmed by the testimony of current employees Nathan Parker, James W. Johnston, L. H. Williams, and Charlie Marable. Although Marable was recalling the work from an earlier time when the rings were not preheated, Arnold testified that the preheaters are not turned off during the welding process.

bursts of air would blow the carbon dioxide gas away and cause pinholes in the weld.

On examination by the Union's counsel, Uhlig, Arnold described welding on the rings as follows:

> A. When you are working on blade rings, you have to rig heaters on it, which is a pipe about so big and round, blaring a flame of fire out the side of the pipe. We have to keep three or four around that lade ring, keeping it 450 degrees hot before you start welding on it. Then, you get up on the stand, get a CO2 gun up there and you're humped right over the blade ring, sitting up there like this, over all the heat. The CO2 gun puts out tremendous heat and smoke. All that smoke is coming right back under your hood and the heat is hitting you on the chest. Your skin gets dried out and feel like it's just going to fall off you. Your clothes feel like they're going to flame up at any time.
>
> Q. Does this cause you to sweat?
>
> A. You sweat, but it dries as fast as you sweat.
>
> Q. Will an employee breathe that smoke in?
>
> A. You breathe that smoke in eight hours a day. When you go home, you feel like your chest is going to explode. I went home with my arms cherry red, my chest red from the heat, I even had clear blisters come on my feet from welding on them.

Stamper gave a similar description:

> Q. Mr. Stamper, if you know, you testified that when you worked in Bay 8 prior to 1980 on hot rings, it was routine to pull a man off after two or three days. If you know, what was the reason for pulling them off after two or three days?
>
> A. They usually pulled them off to give a man a break.
>
> Q. Why would he need a break?
>
> A. 450 degrees is hot enough to give anybody a break. You go so long on a hot ring and it just keeps draining out of you, day in, day out and about a week or two of it and it begins to tell on you. You feel drowsy all the time. Your chest hurts. You cough up that CO2 gas, and it's—you feel like you've got a cold all the time. Your sinuses are a mess. I have went to the bay at night and run a cold chill. That CO2 gas, it will eat you up.

Because of the extreme difficulty of the job of welding blade rings, the policy prior to the arrival of Arnold and Stamper in bay 8 was to rotate employees for 2–3 days at a time, or a week at most. As Parker credibly testified, this policy was instituted several years ago after the bay 8 employees complained about the job to Foreman Booker at a safety meeting. Parker testified that constant work on the blade rings was a safety problem because ". . . you coughed up blood. I have coughed up bloody looking stuff and I have felt tired and rundown all the time."

Notwithstanding Respondent's rotation policy,[24] once Arnold and Stamper came into bay 8, they did virtually all the welding on the blade rings, particularly on the verticle flanges (the major portion of the welding work on blade rings) that had to be done. When they were at work and the blade rings had to be welded, they were the ones to do it on their respective shifts. First-class welders Nathan Parker and R. L. Southern, for example, so testified. Thus, Arnold testified that he spent about 90 percent of his time in bay 8 welding blade rings. From February 12 to March 3, he spent all his worktime welding on blade rings. Parker confirmed that he observed Arnold had to weld on the rings for a 3- to 4-week period before receiving a respite. Then Arnold would have to resume welding on the hot rings—which had been waiting for him since Respondent assigned no one else but Arnold to the rings on the first shift.

(2) Thomas B. Stamper

For approximately 11 years prior to his testimony herein, Thomas B. Stamper has been classified at Respondent in the dual capacity of a first-class code welder and also a first-class automatic code welder. Stamper testified at the February hearing as a witness for General Counsel.

Prior to the February hearing, Stamper had worked in bay 5 for 3 to 4 years as an automatic welder on the inside of heads. He testified that about a week after his February 5 appearance before Administrative Law Judge Evans, Leadman Truman Cloud told him to report to General Foreman Sepulvado's office. Stamper testified as follows regarding the conversation in Sepulvado's office:

> (By Mr. Yudien) Q. Could you just tell what happened?
>
> A. Sepulvado said, "You're going to be transferred out." He said, "Our x-ray percentage has been high for three or four years and it is my job to get them down any way I can. And, so I am going to transfer you to Bay 8." And I asked him, I said, "Well, is my job, my x-rays up? You don't like the way I work, or something like that?" He said, "No, I didn't say that. As far as I'm concerned, *you do good work*. I can pretty well trust you, or anything like that." He said, "*I just feel like transferring you to Bay 8.*" So, then I turned around and told him, "Sepulvado, you know why I'm going to Bay 8." And Barton was in there too. And, I turned around to

[24] I do not credit General Foreman Booker's testimony that the rotation policy was dropped some years ago when the work of welding on blade rings was raised from the floor to metal frame positions stationed a few feet above the floor. Nor do I credit Booker when he testified that he assigned Arnold and Stamper to the blade rings (on the first and second shifts, respectively), when Greene transferred them to bay 8 because a new shipment of rings had just arrived and he had no other employees to assign to the job. I credit R. L. Southern who testified that he was welding on the blade rings the day Arnold came to bay 8, and that Arnold replaced him on the rings that very morning. Except where corroborated by testimony of the employees I have credited, I do not believe Booker in any respect whatsoever. Moreover, as Parker, Johnston, Southern, and L. H. Williams are current employees of Respondent, they testified subject to Respondent's displeasure. I have weighed this factor, among others, in making my credibility determinations.

[sic] Barton knows why *on account of the Union activity*. And, Sepulvado didn't open his mouth. He shrugged his shoulders like, didn't deny it yes or no. [Emphasis supplied.]

Q. Did either Mr. Barton or Mr. Sepulvado deny that you were being transferred due to your Union activity?

A. No, sir, they didn't say nay or yay.

Q. Now, was your work that you were doing, the type of work that was being x-rayed?

A. Yes, sir.

Q. During the time that you had worked in Bay 5, had any supervisor complain[ed] to you or disciplined you for the quality or quantity of your welding?

A. No, sir, in fact, Mr. Sepulvado, around November or December, he asked me to go on graveyard, he said, "If you don't mind." He said, "We don't have but one man [sic] need one man on graveyard to kind of take the slack off." He said, "You are trustworthy, for all I know, you always done good work. Would you mind going on graveyard by yourself and work?" I said, "No sir, I don't mind at all."

Q. Had you ever been disciplined or warned or spoken to about your x-ray rejects?

A. No, sir.

Sepulvado confirmed that Stamper did allege that the reason for the transfer was the former's union activities, but Sepulvado testified that such had "nothing to do with" the transfer. I do not credit Sepulvado.[25]

Although Stamper's bay 5 work of welding the insides of heads had been unpleasant, Stamper testified that his work of welding blade rings in bay 8 was even worse. As the work of welding blade rings already has been described above, it will not be repeated here.

Stamper testified that a handcode welder from bay 8 named Carpenter was sent to perform the automatic welding Stamper had been doing in bay 5. Carpenter told Stamper he had never operated an automatic welder.

(3) Cecil M. Sanders

No sooner was Sanders assigned to the job of welding the insides of heads than he was transferred to bay 10, where he was assigned to the still more difficult job of welding the inside seams on tanks.[26] Sanders testified that the inside of tanks is a hotter job than welding the inside of a head because a tank is about 50 feet long, and the welder may be all the way back in the tank, whereas a head is much shorter. As it is much darker inside the tanks, a welder has more difficulty seeing what he is doing. Additionally, when the welder is welding a closing seam, the tank is sealed from both ends, leaving no air ventilation at all, making it that much hotter, smokier, and darker. Sanders further testified that if a welder were to be injured while welding the inside closing seam in a tank car, no one would see him, and it might be 2–3 hours before he would be missed by anyone.

(4) Conclusion

Bay 5 General Foreman Sepulvado testified that he selected Arnold, Sanders, and Stamper for transfer because they were "just a starting point." "There is no particular reason they were picked."

Superintendent Greene testified that he made the decision to send Arnold and Stamper to bay 8 and Sanders to bay 10 (after Sepulvado had selected them for transfer from bay 5) because Arnold and Stamper had worked in bay 8 previously and because Sanders was an automatic submerged arc welder, and he needed to replace Sanders with another welder, man for man.[27]

In support of its argument that transfers are routine at the plant, Respondent submitted its exhibit 14. It is a list of some 153 employees who were transferred from one bay to another between January 2 and June 11, 1980.[28] Clearly, transfers are not uncommon at the plant. Although General Counsel does not question the concept of transfers generally, he does attack the selection of Arnold, Sanders, and Stamper.[29] Thus, Respondent's Exhibit 14 has no controlling significance in assessing the motivation for the selections at issue here. In fact, I would accord little weight to Exhibit 14 in view of the fact that it fails to show the classifications of the employees transferred. This must be coupled with the fact that several employees' names appear several times.[30] One can only speculate as to whether the frequent temporary transfers are of first-class welders sent to resolve some temporary problem; whether they are of mere helpers sent to where their services are needed; or some other explanation.

The list begins with a wholesale transfer of 14 employees on 1 day, January 2, 1980, to 3 different bays. It seems reasonable to conclude that bay 14 sustained a curtailed need for employees generally at the end of 1979.

[25] In overruling General Counsel's objection to the leading nature of the question, I did suggest that an attempt be made to avoid leading. While leading will become necessary at some point to elicit a negative of an opponent's specific testimony, an Administrative Law Judge can attach greater weight to such negative if it comes after nonleading questions on the topic. At least once earlier in the hearing I had recommended such procedure for this very reason.

[26] Sanders testified that on February 13 Sepulvado transferred him for the purpose of reducing X-ray rejects because they had tried such transfers before with success. (However, no substantiating evidence was presented herein.) Sepulvado said he was not claiming that Sanders' welding was bad. Sanders testified that before his transfer the reject percentage had always ranged between 5 and 9 percent, and that after his transfer he observed postings in bay 5 in late February showing days for which the rates were 18 to 34 percent. Stamper also saw rates of 15 to 19 percent after his transfer, and he, like Sanders, confirmed that the pretransfer rate had ranged from 5 to 9 percent during the years that he had been in bay 5. Stamper had worked in bay 5 since 1976.

[27] Greene's statement implies that bay 10 had selected a person for transfer who had the same classification skill as Sanders.

[28] General Counsel and the Union do not discuss Resp. Exh. 14 in their briefs.

[29] The General Counsel also appears to attack the timing of Respondent's supposed need to reduce the X-ray rejects in bay 5. Thus, while the General Counsel does not take issue with the credibility of Respondent's evidence regarding the 3 percent goal, he does contend that the timing of the selection, and the selection process, reveals that the economic defense was a pretext seized on to punish the three for their protected activities.

[30] For example, R. J. Drummond on pp. 1 (twice if R. L. Drummond) and 2 (twice); R. D. Broome, pp 1 and 2 (three times); J. Brown, pp. 3; and J. R. McDearmont, pp. 4.

Yet these 14 employees are included in the list as if they had a material bearing on the transfers at issue. In short, I find the list, with its unexplained contents, to be of little assistance here.

Respondent also introduced its Exhibit 15, a list of the 12 unit employees in bay 5 on February 1. Of these 12, 4 (Arnold, Huffaker, Sanders, and Stamper) are shown as having testified at the February hearing. Of the 12, 5 (Arnold, Boston, Sanders, Stamper, and Toms) are shown to have been transferred—Boston and Toms on February 10 and Arnold, Sanders, and Stamper on February 13.[31]

Stamper testified that Boston was a fitter who assembled heads preparatory to the welding process. Thus, Boston's work, since it was not welding, had nothing to do with the X-ray reject percentage. Toms' job classification is not specified in the record. However, Sepulvado transferred Boston and Toms to bay 13 where they already had been working for some days, and no employees were transferred into bay 5 to replace them. Since Sepulvado testified that the transfer program was designed to reduce X-ray rejects by swapping people with like classifications in order to bring in people with an attitude geared toward that goal, it appears that the transfers of Boston and Toms were unassociated with the goal of reducing X-ray rejects. This leaves only Arnold, Sanders, and Stamper transferred from bay 5 for the ostensible goal of reducing the reject percentage. Stated differently, 100 percent of the transferees from bay 5 on the asserted reject reduction plan had testified in February. As earlier noted, General Counsel contends that they were transferred to more onerous and less desirable positions in order to punish them for their testimony, and to warn all other employees of the consequences which will follow similar conduct by them.[32]

Finally, Stamper's replacement at operating an automatic welding machine admitted to Stamper that he had never operated one of the machines. The X-ray reject percentages Arnold, Sanders, and Stamper thereafter observed in bay 5, from 15 to 39 percent,[33] indicate that the selection procedure was based on something other than economic considerations. That something other, I find, was the union activities of Arnold, Sanders, and Stamper, and their testimony at the February hearing.

Having found that the protected activities of Arnold, Sanders, and Stamper were a moving cause for their mid-February transfers, it must next be determined whether Respondent carried its *Wright Line*[34] burden of demonstrating that the transfers would have been effected regardless of such protected activities.

In light of the foregoing, and the entire record, it is clear, and I find, that the asserted economic program to reduce X-ray rejects was nothing more than a pretext seized upon to punish the three witnesses of General Counsel.[35] To be effective both as punishment of the three, and as a warning to all others, timing was critically important in order that all employees would appreciate the unmistakable message in such transfers. With a delayed action, the message would be lost on employees. The action had to be taken quickly, and it was. Accordingly, I find that Respondent failed to rebut General Counsel's *prima facie* case and, therefore, that Respondent violated Section 8(a)(1), (3), and (4) of the Act by transferring Arnold, Sanders, and Stamper[36] from their bay 5 jobs in mid-February 1980.[37]

d. *Closer supervision and stricter enforcement of work rules applied to Arnold, Sanders, and Stamper*[38]

General Foreman Frank Booker and Second Shift Foreman Manual Law notified Arnold and Stamper, upon their being transferred into bay 8, of bay 8's work rules. Thus, they were told that they had to be ready to work before the shift whistle blew; that they would work until the whistle sounded for break, and for lunch; that they would have 3 minutes before the final whistle to put up their tools and clean up around their area; that there would be no talking to other employees during working hours; and that they were not to talk to the employees on the opposite shift during the shift changes.

Both Arnold and Stamper credibly testified that the other bay 8 employees were not subjected to these same rules. Thus, Arnold testified that he observed other employees talking to each other during working time, washing up early, sitting by the shed outside bay 8 about 5 minutes before the whistle blew, and walking around wearing motorcycle helmets 5 minutes before quitting time. When these incidents occurred, the bay 8 supervisors were in the bay, sometimes within 10 feet of where the infraction was occurring. Similarly, Stamper testified

[31] The exhibit also shows that Leadman R. L. Paddie was transferred on February 18 and Welding Technician Ward in May.

[32] Vernon Huffaker, the other February witness, already was assigned to the job of gouging (repair work). It appears that a steady basis of gouging is considered undersirable by employees generally.

[33] Although B. T. Walsworth, Respondent's manager of quality control, testified that Resp. Exh. 13, a graph of reject percentages, shows that bay 5's X-ray reject rate began a steady decline from a January 1980 high of 8.14 to 5.85 percent by the end of July 1980, I note also that he testified he did not know why the rate decreased. I credit the testimony of Arnold, Sanders, and Stamper regarding the percentages they observed in bay 8 after their transfers. In any event, even if the reject percentage did decrease, it does not control resolution of the issue of alleged improper motivation to be decided here. Increased efficiency, as an incidental benefit, does not render lawful what is otherwise unlawful.

[34] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[35] Although Vice President Bradshaw's memo to Greene, regarding the reduction of rejects, bears the date of December 14, 1979, I find that such memo does not overcome the timing of the discrimination against Arnold, Sanders, and Stamper, and the public manner in which, for example, Sanders was reassigned on February 6. Moreover, the entire record supports the conclusion I reach here.

[36] While the three do not have a statutory right to such job assignments forever, neither may Respondent transfer them for unlawful reasons.

[37] With respect to the 8(a)(3) finding, I have considered the fact that in some instances General Counsel failed to show disparity. An example is Sanders' transfer to welding inside tanks in bay 10. Presumably, there were other employees who welded inside the tanks, yet there is no evidence that Respondent was punishing union supporters by assigning only (or mostly) employees openly active for the Union to the job of welding inside tanks. Nevertheless, in light of the testimony of the discriminatees at the February hearing, and the fact that Bradshaw, Greene, and other supervisors of Respondent admitted herein their knowledge of the union sympathies of Arnold, Sanders, and Stamper, and in light of the entire record, including the discrimination found against employee Willie Hall, Jr., I am persuaded that my 8(a)(3) conclusion is compelled. The basis for the 8(a)(4) conclusion, of course, is more obvious in view of the central fact of the February hearing.

[38] Par. 10(c) of the first (March 14) complaint.

that when the bay 8 supervisors saw other people talking during working time, they would turn away and act as though they did not see the employees talking. When Stamper was working the day shift, he saw employees Whiddon and Ramsey wash up early on a routine basis, and Supervisors Booker and Wise were only 4–5 feet away.[39] Arnold has seen employee Bass talking to nearly every other bay 8 employee during work, and sometimes Booker was as close as 4–5 feet from Bass who did not stop him from doing this.

In contrast to the leniency with which the other bay 8 employees have been treated, the rules have been strictly enforced against Arnold and Stamper. On various occasions, employees Bass and Howard stopped to talk to Arnold, and Booker made them leave. Arnold and Stamper both described an occasion where Stamper was following up[40] Arnold on second shift on blade rings, and he approached Arnold to find out how the job was running. No sooner had Stamper asked Arnold this then Supervisor Law came up and told Stamper to leave, because Booker was watching. Stamper tried to explain that he was just asking about the job, and Law responded, "Booker don't know what you're talk [sic] about."[41]

In order to assure strict enforcement of the rules as to Arnold and Stamper, they were both assigned to the bay 8 blade ring positioner on opposite shifts, which Arnold and Stamper estimated as ranging anywhere from 8–14 feet from the supervisors' office. This was described by Arnold as "pretty close to the closet" position in the bay, and Stamper confirmed that this was the closest welding position in the bay, while noting that there were a few fitters at the fitup table who were also pretty close to the office.

To obtain a better view of Arnold and Stamper,[42] about 1-1/2 weeks after they transferred into the bay, a second positioner was installed, which was even closer to the office, and both of them were reassigned to work at this new positioner.

Conclusion

General Counsel argues that the issue of closer supervision and stricter enforcement of the rules cannot be viewed in isolation, but rather must be viewed in the context of Respondent's campaign "to make life miserable for the plant's strongest and most vociferous union advocates." Certainly Respondent's actions in enforcing its rules in a disparate manner and keeping a closer watch on Arnold and Stamper would tend to inhibit them in their organizational activities. Moreover, it is clear, and I find, that such discriminatory actions by Respondent were taken in retaliation of their recent testimony in the February hearing as well as for their union organizing activities. By such conduct, Respondent violated Section 8(a)(1), (3), and (4) of the Act as alleged.

e. *February 25 warning to Stamper*

On February 25, employee Stamper received a written warning from General Foreman Booker for bad welding on a pad (G.C. Exh. 14). According to the testimony of Stamper, he welded with employee A. A. Williamson on the job for which he received the written warning. Stamper, who has been employed by Respondent as a first-class welder for about 11 years, observed both his and Williamson's welds, and he noted that Williamson's weld was no better or worse than his. Stamper's unrefuted testimony establishes that he had not been previously warned or disciplined about his welding, and that since he had been in bay 8, he had not been counseled about the quality of his welding by any bay 8 supervisors before receiving this warning. Williamson had been working in bay 8 longer than Stamper.

When Stamper received the warning from Booker, he asked Booker how he knew it was his work. Instead of answering, Booker remarked that it took most of the day to repair the mistakes. He said there were pinholes. Booker did not tell Stamper which "pad" he was supposed to have welded improperly (there are about 15 or 20 pads on an entire tank). Furthermore, Stamper testified that depending on the size of the pad it would take 20 or 30 minutes to a maximum of 2–3 hours.

When he was called under FRE 611(c) the first day of the hearing, Booker testified that he gave A. A. Williamson a verbal warning, which "is given to a man that doesn't understand or just come new to the bay."[43] Booker went on to say that he considers a man who has not been in the bay for several months to be new. Stamper, who had been in the bay for only 2 weeks, apparently would be considered new. Yet Stamper received a written warning.

Booker testified that he gave Stamper the written warning because of welding that Stamper had done which was so poor that it had to be gouged out and reworked. According to Booker, the welding was very poor as it contained overlaps, cold laps, pin holes, and had a general lack of fusion in the weld. He indicated that he gave Stamper the warning for unsatisfactory work. Booker also stated that there were three other employees who worked on the same job, J. E. Johnson, E. Johnson, and A. A. Williamson.

He identified Respondent's Exhibits 31 and 32 as written warnings which he had given to J. E. Johnson and E. Johnson for work on the same tank job. Neither testified at the February hearing. He testified that he did not give a warning to Williamson because Williamson's weld symbol was not on any of the bad work, whereas the symbol of Stamper and the two Johnsons were. Booker

[39] Respondent finally issued Ray Whiddon and R. L. Southern warnings for washing up early in July (Resp. Exhs. 33 and 34, respectively).

[40] The record, at p. 139, ll. 20 and 23, incorrectly uses the phrase "fouling up." I hereby correct this to "following up."

[41] Law admits to having broken up a conversation between Stamper and Arnold, but testified it was because they were talking more than 3 minutes. It is clear from the testimony of Arnold and Stamper that this conversation could not have lasted longer than a few seconds before Law silenced them. Accordingly, I do not credit Law.

[42] Stamper's testimony stands unrefuted that the bay 8 supervisors could see him "very well" through the window in their office.

[43] However, when Booker was recalled by counsel for Respondent, about 3-1/2 weeks later, Booker changed his testimony, and stated that Williamson did not receive any warning, because his stencil was not on any of the bad welding. No documentary evidence was presented to support Booker's testimony one way or the other. As seen by Resp. Exh. 49, which is Arnold's employee record, Booker does make written notations of verbal warnings to employees.

further testified that he did not show the poor work to Stamper because Stamper was working on second shift and the tank car had to be moved out of the bay prior to Stamper's return to work. Booker testified that neither Stamper's involvement in the February hearing nor Stamper's participation in union activities played any part in his decision to issue him the written warning.

Although the two Johnsons worked on the same tank and received warnings for faulty welds, there really is no connection between their work and Stamper's other than all worked on the same tank car. It is clear that Stamper's allegedly faulty weld was on a pad, whereas the warnings to the two Johnsons simply referred to "bad welding." Moreover, they apparently worked on the first shift (Resp. Exh. 31), whereas Stamper worked on the second. I note also Stamper's undisputed testimony that Booker *grinned* as he told Stamper he had a warning notice for him.

Under all the circumstances, I find the warning to Stamper to be a false and contrived event. I credit Stamper, and I completely disbelieve Booker. Thus, I find that Stamper did not make any faulty weld whatsoever, and that the warning is based on a total fabrication. Accordingly, I find that Respondent violated Section 8(a)(1), (3), and (4) of the Act as alleged in paragraph 8 of the first (March 14) complaint, and I shall order that Respondent expunge the warning from Stamper's personnel records.

f. *Arnold disciplined*

(1) Introduction

After testifying in the February hearing, and following his transfer from bay 5, Lynn A. Arnold received a verbal warning, two written warnings, and a 2-day suspension. General Counsel has alleged that such discipline is unlawful.

(2) March 6 verbal warning on quantity of work

Paragraph 7 of the second (April 28) complaint is a simple allegation that Respondent, through Foreman Manuel Law, verbally warned Arnold on March 6. Respondent denied the allegation in its answer. Contrary to such denial, at the hearing General Foreman Frank Booker testified that he instructed Foreman Manuel Law to verbally warn Arnold, and Law testified that he did as instructed. Indeed, Respondent introduced as its Exhibit 47 a copy of an employee daily record form bearing a notation by Law that he had "talked to" Arnold on March 6 for insufficient welding the previous night[44] on job order no. 166071 (a tank).

Booker testified that he had instructed Law to have the tank welded on the inside, cleaned, and ready for attaching the heads (the cup-shaped ends for the tank car) the following morning. On inspecting the vessel, they determined that there were 4–6 hours of work left. On learning the following morning that the tank had not been finished, Booker testified that he gave Law a "chewing out" because the tank was a "hot" (rush) and the job had not been completed. On learning that Arnold had worked on the tank, Booker told Law to tell Arnold he had not put out enough work on the job the previous night. Booker testified that he had the job completed that day in about 1-1/2 to 2 hours.

Law confirmed the 4–6-hour estimate and that Booker wanted the job completed that night. He also testified that from time to time, during the shift, he checked to see how Arnold was progressing. Law stated that at times he observed Arnold just sitting, but he did not determine whether Arnold was slacking on the job. He never told Arnold the work was not progressing fast enough. Indeed, he never told Arnold the job was to be completed that night or that it was a "hot" order.

Arnold testified that the night of March 5 Law had come into the tank and, after inspecting the work, told Arnold that the work was good and that he had done "a night's work." On reporting for work March 6, however, Arnold learned a different story. Thus, in the bay 8 office, in the presence of Charles LaBorde,[45] Law told Arnold he was going to have to start producing more work, that he had been watching him and Arnold was not producing enough.[46] Arnold reminded him of their conversation the previous evening, but Law denied so remarking to Arnold. He said Arnold would have to produce more and he would be watching Arnold more closely.[47]

Arnold asked LaBorde if he had any complaints about his work and LaBorde replied he had none.[48] Law then said that it was Booker who had told him to call Arnold in and warn him.

Arnold testified in detail concerning the work he had done the night of March 5.[49] Thus, he describes having to reset the roll (which apparently turns the tank) more than once, haul an airhose and the welding leads to the tank, weld both outside and inside fittings, and backgouge. The welding alone took some 6-1/2 hours, and the other preparatory work consumed the balance of the shift, except some cleanup time at the end.

One explanation for the different time estimates is that the parties differ on what Arnold had to do. For example, Law initially testified that the outside welding had been done on the day shift. On cross-examination, he conceded that Arnold did have to weld one outside fitting. Law also stated that Arnold did not have to pull over any welding leads since the day crew had left them there. Arnold testified that none of the fittings in place had been welded on the outside and inside of the tank.

[44] It appears from the testimony of Law that Arnold had just that week been moved from the day shift to the second shift where Law was the foreman.

[45] LaBorde is a leadman.

[46] Arnold testified without contradiction that in his 14 years of employment with Respondent, he had never been so much as counseled regarding his work until this warning.

[47] At the hearing Law testified that the evening of March 5, although he knew Arnold had not done enough work, he did not say so. Instead, when Arnold asked him if he was satisfied, Law simply said "if you are." Law intended to discuss the matter with Booker, but Booker came to him first.

[48] LaBorde was not called as a witness by Respondent.

[49] He also testified that the tank was waiting for him the night of March 6 when he received his warning, and that it took him about 2 hours to finish the job that night.

Called in rebuttal by Respondent, Plant Superintendent Greene identified Respondent's Exhibit 47, the operation process sheet for order 166071 (ostensibly the tank in issue). According to Greene, there is no way in which Arnold could have welded all the fittings shown thereon in 8-9 hours. In reply, Arnold testified that he welded all the fittings there were to be welded at the time, and that Respondent's Exhibit 47 is not representative of the job as of March 5-6. For example, he testified that there was no manway "E" on the tank, yet such is shown on the exhibit. Whether a manway was added later, Arnold could not say. Respondent contends that Arnold has confused the job orders with the passage of time.

I attach no weight to Respondent's Exhibit 47 for several reasons. First, it is a blueprint dated December 20, 1979, and Greene conceded that it is just an estimate. Second, in view of Arnold's specific and detailed testimony, I have little confidence that the items shown in December are what faced Arnold in March. Additionally, Respondent Exhibit 47 reflects (under man-hours per unit) that bay 13 is to perform fitting, gouging, and welding. However, Greene testified that, while such work originally was scheduled for bay 13, it had been switched to bay 8, and the sheet (Resp. Exh. 47) "never changes once it is made up."[50]

In addition to all the above shortcomings of Respondent's Exhibit 47 as a reliable picture of the job to be done on March 5-6, I note that Greene conceded that Respondent's accounting department produces a computer printout showing the amount of actual work done for the job and which would reflect the work done by Arnold and, presumably, other employees. Respondent did not see fit to introduce such document,[51] and I can only conclude from such failure to introduce that the document would have been unfavorable to its contentions.

Arnold impressed me with his straightforward manner and his detailed testimony, and I credit him. In contrast, Greene and Booker, as noted earlier, exhibited an appearance of hostility during their testimony, and I do not credit Law. For example, I find it strange that Law, knowing the tank was "hot" (rush), made no mention of this to Arnold the night of March 5 when he, at times, supposedly observed Arnold sitting (and possibly preparing to work) and evidently knew after a while that Arnold would not finish the job.

In short, I find that the correct, accurate, and true version is that given by Arnold, and that Respondent's version of the job is a complete and total fabrication deliberately devised in order to build a disciplinary record on Arnold in order to punish him for his union activities and his testimony under the congressional statute. Accordingly, I find that Respondent violated Section 8(a)(1), (3), and (4) of the Act as alleged, and I shall order that Respondent notify Arnold that it revokes such March 6 warning.

(3) April 11 written warning on wasting gouging rods

Arnold testified that about 10:30 Friday morning, April 11, Leadman David G. Emerson called him into the office of General Foreman Frank Booker. In the office, Booker began by charging Arnold with slacking off in his work effort, and he stated that the previous day (Thursday, April 10) he had inspected Arnold's work area and allegedly found that Arnold had done very little work on the blade ring. Arnold disputed this.

Then Booker displayed a batch of gouging rods and stated he had picked them up under Arnold's work area the day before (Thursday). Arnold said they were not his rods, that he had not been at work on Thursday, April 10.[52] Booker said he was going to give Arnold a warning, not for his work but because of the gouging rods.[53] The warning notice (G.C. Exh. 9), dated April 10, reads in pertinent part:

> For violation of Rule No. 19—Insubordination—wasting company property in the form of gouging rods despite repeated instructions. Employee discarded jointable rods ranging from 4" to 11" in length. These rods should not be longer than 2".
>
> Photograph retained in Employee Relations Department.

The warning is signed by Emerson (who did not testify) and bears four sets of initials, one of which no doubt is Booker's.

Arnold testified convincingly that neither Booker nor Emerson had ever warned him previously on this matter, and he told Booker on April 11 that no one had ever so warned him. Booker made no response. The alleged prior warnings apparently are the basis of the "insubordination."

In testifying as a witness called by General Counsel under FRE 611(c), Superintendent Greene disclosed that another employee had worked at the same station as Arnold. Thus, it was important to learn just when the rods had been found, for they apparently could have been left by an unidentified employee who worked the evening shift on Wednesday, April 9.[54] In following up

[50] Additionally, I note that on Resp. Exh. 30, a blueprint diagram of the shop dated September 3, 1969, it was ascertained in *voir dire* that certain measurements in issue had been added the week of the hearing. Such fact should not have been left to *voir dire* by General Counsel, but should have been made known at the time of the offer. Thus, if one blueprint, Resp. Exh. 30, can be added to, I am compelled to conclude that Resp. Exh. 47 could likewise have been added too even though Greene testified there have been no additions to Resp. Exh. 47.

[51] Yet Respondent had introduced such computer printout in relation to the blade rings' order (Resp. Exh. 18).

[52] Respondent's employee daily record card (Resp. Exh. 47) shows code letters "S" over "E" for the date of April 10. While this could mean "sick" and "excused," there is no explanation in the record other than Booker's statement that it meant Arnold was sick that day. When the exhibit had earlier been marked as G.C. Exh. 7, Greene testified that the entry regarding Arnold working the first shift in April was supposed to be correct. A computer printout for the job, reflects that Arnold did not work on the project on April 10 (Resp. Exh. 18 p. 2). Respondent acknowledged that its records did reflect the April 10 absence.

[53] Booker subsequently stated to Emerson, in Arnold's presence, that he may have looked on Wednesday rather than Thursday. This was after Arnold reminded them he had not been at work on Thursday, and it smacks of a convenient change in memory to fit the need.

[54] When called by Respondent, Booker testified that Arnold was the last person to work at the station. Yet Greene testified an employee had worked at the same station. He was unclear as to whether he meant a different shift.

this line of inquiry when General Counsel called Booker under FRE 611(c), Booker testified as follows:

Q. When did you find those rods?
A. When did I find them?
Q. What time of day?
A. I don't remember, off hand.
Q. Was it—do you remember what shift you found it?
A. Yes, on the day shift I found it.
Q. When did you write up that warning?
A. I don't remember the date.
Q. Did you write the warning up on the same day you found it?
A. I don't know.
Q. Well, when, if a warning is dated a particular date, is that when you write up the warning, the day you date them?
A. Ask that question again, please?
Q. Do you write up the warning on the day that they dated?
A. I write up a warning and date it the day I find the rods. I don't know what day it might be written up.
Q. The warning was dated the day you found the rods?
A. I didn't say that.
Q. Could you explain what you did say?
A. I said, I write a warning on the day, I write the date in on the day I find the rods. But, I could write it the following day.
Q. Okay. So, If a warning has a particular date on it, that is the date you found the rods?
A. That is the date I wrote it.
Q. If a warning has a date on it, would that date reflect the date that you found the rods?
A. No, not particularly.
Q. If a warning has a date on it, would that date reflect the date the warning was written?
A. Pardon?[55]
Q. If a warning has a date on it, would that date reflect the date that warning was written?
A. Right.
Q. Did you write up the warning to Lynn Arnold on the same date that you found the rods?
Mr. Hester: Objection, asked and answered.
Judge Linton: Well, frankly, the witness seems to change his answer and it may be that he doesn't understand the question on this one. So, I'm going to overrule that objection.
By Mr. Yudien: (Resuming)
Q. You can answer the question.
A. Ask it again, please.
Q. Did you write up the warning to Lynn Arnold on the same date as when you discovered those rods?
A. I told you once, I didn't know.
Q. Might you have?
A. I might have.

[55] Booker suffers from some hearing loss, and I consider the "Pardon" to be a reflection of that fact rather than anything else.

In contrast to his inability to recall the time of day he found the rods, or whether he prepared the warning the same day he found the rods when asked by General Counsel, Booker testified with clear recollection when called by Respondent. Thus, he then testified that he found the rods in the early morning of April 10 and that he told Emerson to make out a warning slip for Arnold.

Finally, I credit Arnold's testimony that he burns his gouging rods down to some 2 inches; that he saves rods 2-1/2 inches or greater in length; that he has pointed out to Leadman LaBorde that whole gouging rods were lying scattered in the bay and LaBorde simply shrugged his shoulders.

As I credit Arnold's testimony that he had never previously been counseled or warned regarding gouging rods, and in light of his credited testimony that he does not discard rod stubs in excess of 2-1/2 inches, I find that Respondent's warning to Arnold falsely basing "insubordination" of fabricated prior warnings,[56] violates Section 8(a)(1), (3), and (4) of the Act, as alleged in paragraphs 8 and 17 of the second (April 28) complaint. I shall order that the warning be expunged from Arnold's personnel records and that Respondent notify Arnold it has done so.

(4) May 29 suspension and June 2 warning

It is undisputed that on Thursday, May 29, when Arnold reported for the second shift, he was called into Plant Superintendent Greene's office for a discussion concerning some welding he had done. Present in the office besides Superintendent Greene, were Personnel Manager George Dillard, Foreman Manuel Law, and Arnold. Greene testified that he called the meeting because it had been reported to him through Booker that Arnold had used the wrong kind of wire on welding a Westinghouse exhaust extension the night before. He further testified that Dillard was present, in lieu of Vice President Bradshaw or Employee Relations Manager Hillman Deaton, because one of them is present when the problem appears to be serious enough to involve the possibility of termination of the employee. Sometime that morning, Booker had called him and reported that as two of his welders were moving the exhaust extension, job number 159120, they observed the wrong wire on the welding machine and that he was afraid it had been welded with the wrong wire. Greene told Booker to obtain a sample of the weld and give it to the metallurgist for chemical analysis. Later that day, the metallurgist, or welding technician, confirmed that it had been welded with the wrong type of wire.

Booker confirmed the foregoing and testified that he personally went back and looked at the welding machine and observed that the spool of wire on the feeder was McKay 75 and that it should have been 91B3L wire. The

[56] It seems evident that Respondent was more concerned with preparing for litigation than in ascertaining the true facts. Thus, Respondent wrote on the warning "photograph retained in Employee Relations Department." The photograph was received in evidence as Resp. Exh. 35A. In short, I find that the gouging rods (Resp. Exhs. 35 and 35A) were not Arnold's.

chemical analysis proved that McKay 75 wire had been used.

At the afternoon meeting in Greene's office, Greene asked Arnold what type of wire he had used. Arnold stated that he had used 91B3L. Greene asked how he knew that and he said he had looked on the box which was labeled 91B3L. Greene told him that he had used McKay 75 wire. Arnold, according to Booker, asked how Greene knew that and Greene replied because a chemical analysis had been run.

Arnold testified at the hearing that the roll of wire inside the box also has a label on it and that he did not remember checking the label attached to the spool of wire, and that as the wires are the same color, there would be no way of telling the difference between the two without reading the labels. He further testified that he had no reason to believe that the sticker on the inside of the spool was going to be different from the one on the outside of the box. He testified that it was his usual procedure to check only the label on the outside of the box, and that he had never been instructed to do any differently.

Vice President Bradshaw testified that Respondent's vessels are all built under the standard set by the code of the American Society of Mechanical Engineers (ASME). Under the code, and in accordance with the code, Respondent established a quality control manual with guidelines relating to different procedures and processes. He testified that Respondent's quality control manager established certain guidelines for supervisors, weld technicians, and leadmen. Under these guidelines, such persons are to issue the welding rods and welding wire, make a record of it, and ascertain that everyone gets the right rods and wire. Although such persons can delegate authority, for example, to a top welder in a bay, with the approval of the quality control manager, there is no evidence in the record that the supervisory or quality control personnel delegated this responsibility and authority to Arnold or anyone else. Nevertheless, Greene testified that at the meeting he "reminded" Arnold that it was a welder's responsibility to secure the proper type of wire for each job, and that Arnold understood and knew that fact.

Both Arnold and Booker testified that a certain amount of heat was generated in the meeting when Booker admittedly interrupted Arnold at one point by saying, "wait a damn minute," in order that he, Booker, could express a point. Booker testified that the point he made at that time was that if the two welders had not pointed out the problem the job could have gone out of the bay and to the customer, put into use, and "could have exploded and killed several people and cost several million dollars." At this point in the conversation, Greene told Arnold to punch the clock, go home, and return Friday, that they had other things to consider. When Arnold asked what other things they had to consider, Greene told him that it was none of his business. Arnold responded that other employees had done similar things and no one had been sent home as far as he knows. Greene replied that employees had been sent home, and they also had told the supervisor that they had made a mistake but that Arnold did not know he had made a mistake. Booker stated that they had another test they wanted to run on the weld.

Greene further testified that the following day (Friday) Booker reported another problem regarding welding by Arnold. This time it was on a blade ring which allegedly was "literally full of pinholes and bad welding on both sides." Booker reported that Arnold and employee Jimmy R. Grant had welded on the blade ring.

Arnold testified that in leaving to go home he stopped to tell his rider that he had to leave and for the rider not to wait for him at the end of the shift. About half way to bay 13 where the rider worked, Bay Foreman Law caught Arnold by the shoulder and told him he would have to leave the plant. Arnold told him that he was going to tell his rider that he was leaving. Law told him that he could not do that and he had to "get out of the plant." Arnold asked if Law meant he could not tell his riders that he was leaving. Law responded, "E. C. Greene wants you out of the plant." Arnold said he had to go tell his riders, and he proceeded. Law followed him. Thereafter, Arnold called his brother-in-law who came and picked him up.

On Friday around 2 p.m., Arnold testified that Greene called him and told him not to report to work that they were not through with the investigation. Greene testified that he told Arnold that other problems had come up. When Arnold inquired as to the nature of those, Greene told him that there were some problems with blade rings and they were running more calculations on the exhaust extension.

Greene testified that it was the decision of him and Dillard that Arnold should be sent home, for they wanted to know how much rework would have to be done and there were more tests and calculations to run. The record does not reflect the nature of these other tests and calculations.

Greene testified on cross-examination that he did not permit Arnold to continue working because he had not admitted that he made a mistake. Earlier, Greene had testified that an employee may not get a warning if he admits his mistake. This was in relation to bad welding involving a bunch of pin holes, and where the welder admits he made a mistake and wants to do something about it.

Booker testified that Arnold was sent home because there was a lot of rework involved in the exhaust extension, requiring gouging out the weld and rewelding, and Greene wanted to check further and see how far and how deep it had to be gouged.

Greene testified that Booker reported to him that extensive pin holes and other problems had been discovered in a blade ring.

Foreman J. C. Wise testified that quality control had found the poor work on the blade ring and brought it to his attention through a rework order of form 13-A. Wise testified that on inspecting the welding on the blade he found that there were two weld symbols on the blade ring, one being for Grant and the other being for Arnold. Wise approached Grant who initially denied that he had done the welding. Wise testified that the welding

had been done a week earlier. Later, after Grant had had the opportunity to inspect the work, he told Wise that in fact he had done the poor welding and explained that he simply had done a bad job.

On the afternoon of Monday, June 2, Arnold was called to a meeting in Greene's office. Employee Relations Manager Deaton was present. At the meeting, Greene gave him a warning slip (G.C. Exh. 7) for violating rule no. 41, "Unsatisfactory work on jobs 159120 - exh. ext. & job 159122-01." The warning was signed by J. F. Booker and initialed by Greene. Booker testified that initially he had written a separate warning for the exhaust extension, but then tore it up and put both jobs on the same warning notice.

At the time Greene handed Arnold the warning slip, he told Arnold that the committee had met and decided to bring Arnold back to work. He then handed Arnold the warning and said that they had found some more welding Arnold had done that was bad and that they had photographs of it. He said that the welding was rotten all the way through, had pin holes in it, the weld was broken, undercut, and had to be deseamed and welded. Arnold asked him how he knew that he had welded on it, and Greene replied because Arnold's weld symbol was on it. Arnold stated that more than one welder worked on it and how did Greene know that Arnold did all of the bad welding. Greene stated that another employee was given a warning for the same job.

When Deaton inquired whether Arnold had welded on the blade ring, Arnold told him he did not know because he had welded on 10 or 15 and did not recall at that time. Greene stated that they could argue all day and not get anything settled, and he told Arnold to go back to work.

Arnold testified that Jimmy Grant also welded on the blade ring. He further testified that the day the work was done, the weld had been capped out on one side and the supervisor (Foreman Law) told him the weld was finished and told him to turn it over. Arnold testified that he assumed the supervisor had seen the pin holes and that they would be repaired in the back at what is called the "pickup" area where some repairs are made. Arnold turned the blade ring over and started welding another bevel. Arnold testified that on the side that had the pin holes, he had welded only in the very bottom of the bevel before, and that the pin holes were not in his welds but on the surface. While he stated that his weld symbols ("LA") were on the blade rings, it would not necessarily indicate the part of the welding he had actually done. Arnold testified that he did not repair the pin holes because his supervisor told him the weld was finished and to turn it over, and that in bay 8 "when the supervisor tell you to do something, that is what you do."

Although Arnold testified that it was not unusual for the men assigned to pickup to do these pin holes, the inspector who found the pin holes, Roy Ross, testified that these pin holes were the worst he had seen in the recent past and should have been repaired by the welder, and that if he, as inspector, sees the poor welding first, it will not go to the pickup welding process but will be rejected by him.

Grant testified that he has been a first-class welder only since March 14. This was the first time he had welded on a blade ring and the day before he welded on it he asked Foreman Wise to show him how because he had not previously performed such welding. He testified that he stenciled his weld symbols by the portion of the work on Friday, May 23, just as the whistle blew ending the first shift, and he did not have time to check for pin holes. When he returned to work the following Monday, the blade ring was gone and he was again unable to check for pin holes.

Grant admitted that when first questioned by supervisors about the bad welding he denied doing it because he was not sure which side he welded, but when he later had a chance to inspect the job himself he realized he had done the faulty welding. He then went to Supervisor Wise and admitted to him that he had made the pin holes. Later that day, he received a warning slip for his "unsatisfactory work" on welding the blade rings (G.C. Exh. 16, dated 5-30-80).

It should be noted that on May 20 Arnold assisted in distributing a handbill at the plant gate on behalf of the Union. The handbill was a copy of a letter dated March 10 addressed jointly to Respondent's president, William E. Adams, and to the Regional Director for Region 15 of the Board from International Representative Al Washington, Jr., on the Union's letterhead. (G.C. Exh. 12). Some 48 employees signed their names as the "Boilermakers in-plant organizing committee." Arnold's name is the first on the list, and Grant's signature is on the second page toward the end. Booker, who signed Grant's warning slip, admitted that at the time he issued the warning to Grant he was aware of the handbilling at the gate and of Grant's signature on the list. Presumably he was also aware of Arnold's signature.

Grant testified that a few minutes after Booker and Wise had asked him about the welding on the blade ring, he went back by himself and inspected the blade ring and ascertained that he had caused the pin holes. He thereafter called Wise over to his work station and said that he had gone back and inspected the job and that he had done the pin holes. Wise replied, "I know. Me and Mr. Booker had figured that already." Wise did not deny this in his testimony.

A little later, Wise came by and called Grant aside and gave him the warning slip and told him that Booker had told Wise to give it to Grant. Grant testified that Lynn Arnold had welded on the other side of the blade ring.

Grant explained that it was not unusual for one welding blade rings for the first time to get pin holes in the work, and that when using a CO2 gun a whiff of wind can cause a pin hole. Indeed, the day before he began work on the blade ring he asked Wise to show him how to weld on it since he had never welded on it before.

With respect to the wrong wire used by Arnold, there is no doubt that such involved a serious mistake. However, I find that the mistake was that of supervision in accordance with Respondent's own quality control guide and not that of Arnold. There is no evidence that Respondent felt the mistake was serious enough to warn the supervisors, leadmen, and quality control personnel in-

volved, nor is there any evidence that welders had been advised that, contrary to the quality control manual guidelines, they are expected to match the wire to the label on the box. While a disinterested observer may not see anything wrong with requiring a welder to make certain that the wire is the same as that on the box label, it must be remembered that the welders work with these materials day in and day out. Moreover, Arnold testified that he followed his usual procedure—a procedure which had never caused a problem previously. In view of all the circumstances, I conclude that Respondent saw the event as a convenient pretext to continue to build its case against Arnold, and that in the absence of his union activities and testimony in February it would not have issued the warning to him.

With respect to the bad welding on the blade ring, the evidence reveals Respondent's animus against Arnold (for which Grant suffered). Thus, even though on Friday, May 30, Grant had admitted that he did the bad welding which had caused the pin holes, Respondent nevertheless delivered the predated warning to Arnold the following Monday. Grant, I find, was warned only to justify the warning given to Arnold.

I shall order that these warnings to Arnold and Grant be expunged.

g. July 22 written warning to Sanders

By hearing amendment (G.C. Exh. 2) to the first (March 14) complaint, General Counsel added paragraph 8A alleging that Respondent violated Section 8(a)(1), (3), and (4) of the Act by warning Sanders on July 22 both in writing and verbally (orally).

Sanders testified that on Friday, July 18, while he was working in bay 10, Supervisor "Red" Mitchell of bay 13 came and asked if he would work overtime the following evening in bay 13. Sanders replied that he would. The following evening, under the instructions and supervision of Leadman Porterfield, Sanders welded a closing seam on a tank (welding a head to the tank).

A brief description here can not disclose the work problems Porterfield and Sanders, along with a fitter and the welder's helper, experienced that evening. Porterfield had to switch Sanders from job to job at different times. These were several interruptions. Finally, on the closing seam for which Sanders received his warning, a comedy of errors, none caused by Sanders, occurred.[57] Thus, after Sanders had welded about half the seam his weld ground, which was welded to the outside of the tank by the welder on the previous shift, broke off, and his machine stopped. The helper climbed up a ladder to the manway and hollered in to Sanders that the ground had broken. After someone rewelded the ground, Sanders welded about 3 more feet when Porterfield climbed up to the manway entry and informed Sanders that the flux belt on the outside of the tank was broken. Sanders stopped welding again, and waited inside the tank about a half hour while it was being fixed. On being signaled, by their beating on the tank, that it was ready, Sanders then welded about another foot, and had to stop again when Porterfield climbed back up the tank to the manway opening and told him that the helper forgot to put flux on the belt, which had set the belt on fire and burned a hole in the belt. After this was repaired, Sanders was finally able to finish the job. Sanders testified that such starts and stops are easily visible in the weld. Although the foregoing nightmare of events was exasperating and disconcerting, Sanders testified that the biggest problem was the fact that there was a misalignment of 1/4 inch by virtue of a head which was too large. In the terminology of Quality Control Manager Walsworth, there was an offset. Walsworth testified that there is an offset on every railcar tank and every head because the head has a 1/8-inch (2/16-inch) to 3/16-inch greater thickness than the tank shell it is joined to. Thus, Walsworth testified that even on a perfect joinder there is an offset (an extension of one metal plate above the other). In addition to the offset, there may be some misalignment. Walsworth testified that the combination a fitter does is acceptable so long as it is within the specified tolerance. The tolerance for bay 13 is not defined in the record.[58]

The fitter told Sanders that he had mismeasured the head and was having a lot of trouble with it (the offset/misalignment) and might have to cut if off and put on another head.[59] Sanders' testified that supervisory Leadman Porterfield was well aware of the misalignment problem.

Quality control personnel, in X-raying the closing seam, found defective welds in each of the 26 pictures taken of the circumference of the closing seam, and for these defects Greene issued Sanders a warning (G.C. Exh. 13) on Tuesday, July 22, in the presence of General Foreman Sepulvado and Foreman G. W. McKaskle.[60] Although the warning itself specified 25 pictures as disclosing defects, Walsworth testified that the correct number was 26 out of 26. Greene explained that it takes 26 photos, 18 inches in length, to photograph the circumference of a closing seam on a tank, and that there is some overlap in each picture.

When giving Sanders the warning, Greene testified that he told Sanders he had to "go on record" with him regarding the defects because of their severity and the extensive rework involved. Greene testified that on the preceding order, with 50 tanks, the average defect was only one per closing seam, with a high of five defects.

Sanders testified that Greene asked him what had happened on the job, and Sanders explained all the details (summarized above). He also explained that the large misalignment had caused the weld to roll, and that Sand-

[57] Sanders testified that he was working on the inside of a 50-60-foot-long tank, at one end and some 25 feet from the manway exit. It was dark, smokey from the welding, and so hot inside the tank that a yellow crayon in his pocket melted. At one point someone, apparently an insensitive "practical joker," beat on the tank with a hammer—with predictable effect upon Sanders who was inside what then became a large steel drum.

[58] Sanders testified that the fitter told him they did not fit a head on a tank in bay 13 where the difference was more than one-fourth inch. He further testified that in bay 10, where he had been since about February 12, quality control rejects any difference greater than one-eighth inch.

[59] Indeed, Sanders stated that in fact some others were cut and redone.

[60] Porterfield was conspicuously absent. McKaskle did not testify. Thus, Sanders' testimony is undisputed that when he was helping to distribute the May 20 handbill (G.C. Exh. 12) he handed one to McKaskle.

ers had to increase the voltage to compensate for the roll in order to spread the weld a little wider. In short, Sanders told Greene that a 20-minute job had been extended to 2 hours because of all the problems.

After checking with Sepulvado, Greene said that the tanks in Bay 13 were different from the ones in bay 10, and that the ground is the responsibility of the welder. Sanders testified that the latter is true if the one doing the welding attached the ground.

To Sanders' knowledge (and no evidence to the contrary was presented), neither the helper who failed to put flux on the flux belt, nor the fitter who improperly aligned the head and tank, nor the welder who improperly tacked the ground to the outside of the tank received warnings for their mistakes.

The meeting ended with Greene telling Sepulvado to give Sanders the warning. After receiving the warning, Sanders left.[61]

Clearly, Respondent is entitled to decide what work is acceptable and what must be rejected, and it may discipline employees for defective work so long as such discipline has not been motivated by statutorily protected conduct. Even then, Respondent may do so if it proves that it would have issued the warning in the absence of such protected activity. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

It is significant that only Sanders[62] was warned for the events involving the closing seam. Of even more significance is the fact that Leadman Porterfield (who apparently, so far as the record shows, received no reprimand himself) was with the job, and the welder's unidentified helper, every step of the way. Porterfield knew the problems.

In short, I find and conclude that Respondent seized upon the defective welding as an excuse and pretext to add one more warning to Sanders' record, and that it would not have issued the warning absent Sanders' protected activities.[63] Accordingly, I find that the July 22 warning violated Section 8(a)(1), (3), and (4) of the Act,[64] and that Respondent should be ordered to rescind same and notify Sanders personally that it has been expunged from his personnel records.

4. Crowder's March 12 written warning and suspension

Willie D. Crowder, who also testified in the February hearing as one of General Counsel's witnesses, has been employed by Respondent for over 12 years. He has been classified as a first-class hand code welder and also as an automatic machine welder for about 11 years.

On March 12, Crowder received a written warning (G.C. Exh. 17) for "Failure to follow instructions" in violation of rule 19. More specifically, the warning issued allegedly because the grounding nut was loose on Crowder's welding cable. When Crowder declined to accept the warning notice, he was suspended.

Vice President Bradshaw testified that Respondent had an ongoing program, for quality control and safety reasons, to ensure that the welding machines were properly grounded. He testified that if a grounding were not properly tightened, the grounding lead could heat up and cause substandard welding or possibly a severe shock. He initiated the construction of a new type of welding ground as part of this program. Photographs of the welding grounds are in evidence as Respondent's Exhibits 19 and 20. He further testified that since about early June 1979 Respondent has had numerous meetings and other communications with supervisors and employees in which they have been instructed regarding the importance of keeping the grounds tight.

Bay 11 Foreman Delmo Cason testified that he left his office around 1 p.m., follwing the lunch period with the intention of going to the back of the bay. Crowder's welding position was directly in front of Cason as the latter left his office. Cason observed that the tank Crowder was working on was rolling (a normal procedure on some of the jobs) and he observed that the ground was "flopping around." Therefore, Cason testified that he walked over to make sure and found that the ground was "very loose." He then reported the matter to Claude Veatch, general foreman of bays 11 and 12, and the two returned to Crowder's work station and again inspected the ground. Veatch agreed that it was loose, and called Crowder down and had him tighten the ground with a crescent wrench. Confirming the testimony Bradshaw had given, Cason testified that he was concerned about Crowder's loose ground because of the instructions to keep them tight and because the matter had gotten to the point where he was, "concerned about my job." Indeed, he testified in the Monday meeting with the bay employees that he had told them what was expected concerning tightening of the grounds, and that they should check the grounds every morning before they went to work, tighten them with a crescent wrench, and to recheck them three or four times a day. He further testified, "And I told them also that was the last time we was going to tell them about the grounds. The management of the company was through talking about grounds. We would have to do something about it."

Crowder testified that after taking his lunchbreak on March 12 he noticed, as he was about to resume work, that the grounding nut was loose on the tank. He therefore tightened the nut by twisting the cable in a clockwise fashion and also by tapping the nut with a wedge to make certain that he got it "snug and secure." He then ascended the tank and began welding wrap pads. About 20 minutes before 1 p.m., he observed that Cason came straight to the end of the tank where Crowder was working, grabbed the grounding cables and "jerked" them side to side several times until they were so loose they would swing freely. At the time, Crowder was

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[61] Just before the end of the meeting, Greene accused Sanders of having a "real bad" welding record in bay 10. Sanders responded that was the first he had heard of it.

[62] Who had acceded to a request for help in bay 13, and who consented to Porterfield's personal request to stay and weld rather than leave after all the confusion and after someone hammered on the tank with Sanders inside.

[63] Greene's closing remark to Sanders, that the latter had bad welding in bay 10 (a new allegation to Sanders) has all the characteristics of a cat licking his lips, while taunting the trapped mouse, in anticipation of having the mouse as its dinner course very soon.

[64] As alleged in par. 8A of the August 4 hearing amendment (G.C. Exh. 2) to the first (March 14) complaint.

welding a pass around the pads with the welding machine. About 20 to 30 minutes later Cason returned with Veatch and shook the cables again while showing them to Veatch. They both looked up at Crowder and then walked away. Moments later Crowder finished welding the pass, took a crescent wrench down the ladder and tightened the ground and returned to his job. Some 30 to 40 minutes later Cason summoned Crowder to the office to see Veatch.

In the office, Veatch said that the employees had been reminded to keep the ground cables tight and then handed Crowder a warning slip. Crowder made no effort to reach for it and said that no one had told him he would get a warning because the ground nut was not tight. Veatch stated that Crowder had to do what he was told, and again handed the slip toward Crowder who again made no effort to accept it. At that point Veatch said that, "Well, you can accept it or refuse it." Crowder asked what will happen if he refused it and Veatch replied that he would write "a letter" about it. Crowder told him to go ahead and write the letter. Veatch responded, "Don't worry. Don't worry Crowder, I'll do my job." Crowder replied for him to go ahead and do his job, saying, "Thank you, I appreciate it." Crowder then returned to his work station and resumed welding.

In his own testimony, Cason admitted that he shook Crowder's ground cables, but denied that he loosened Crowder's ground. He further testified, on cross-examination, that, "We were concerned with grounding at the time. I was checking anything that was suspicious of having a loose ground." However, he stated that he was not particularly going to check Crowder's ground but just happened to see that it was loose. Nevertheless, he testified that he did not check any other grounds in the bay that day, although he had done so on Monday of that week.

Veatch denied that he told Crowder he did not have to accept the warning even though a report would be written about the matter. He assertedly told Crowder that while he could not make him take the warning slip, if he refused to do so he would have no other choice but to write a report on the situation which would be made a permanent record in his personnel file. When Crowder still refused, Veatch told him to return to work. After Crowder returned to work, Veatch contacted Superintendent Greene, outlined the events, and recommended that he be permitted to send Crowder home for refusing to take the warning notice. Greene said not to do so but to call Crowder back into his office again and if he still refused to take the warning then send him home.

It is undisputed that Cason was sent to summon Crowder again to the office. Veatch testified that in the second meeting he told Crowder that they needed him to take the warning slip to acknowledge the fact "that you have made a mistake, and that you knew that you shouldn't have done it and take the warning slip and let it be a lesson to you and a reminder not to continue that." Crowder reiterated his position that he was not taking the warning slip, and that Veatch could do whatever he wanted with it. Veatch then testified that he told Crowder to punch out and go home and that they would be in touch with him later. He testified that Crowder was sent home in order to maintain a measure of discipline. Following such testimony, Veatch was specifically asked if he had told Crowder in the second meeting to take the second warning so as to acknowledge that he had made a mistake. Veatch answered in the affirmative and stated that Crowder admitted that his ground was loose and that he had gotten his crescent wrench, descended from the tank, and tightened it. Veatch testified that he had given written warnings to other employees for failing to ground their machines properly, and he identified Respondent's Exhibits 22 and 23 as warnings he had given to Memphis Evans and Leon Bell for having their grounds loose. The warnings are dated August 13 and April 21, respectively, *after* the event in issue here.

Concerning the second meeting, Crowder testified that it was very short and that neither he nor Veatch took time to sit. Veatch stated, "Crowder, it seems to me you got a bad attitude." Crowder asked him how he could arrive at that conclusion since they had talked only once. Veatch told him, "Well, anyway, you punch out and go to the house and don't you come back until I call you." Crowder testified that he then left, put up his tools, and went home. In neither meeting, Crowder testified, were voices raised, and both parties spoke in a regular, low tone of voice.

Crowder testified that when he went to pick up his paycheck 2 days later, on Friday, March 14, Cason told him that he had been trying to call him, and that Employee Relations Manager Hillman Deaton wanted to talk with him. Crowder then went to Deaton's office where Deaton asked him for his version of what had happened. Crowder testified that he told Deaton everything in its entirety, including how Cason had swung the grounding cable and how "they got the warning slip plotted up on me." Deaton stated that the warning slip was not an admission of guilt, but simply something to show that he had been warned. Deaton advised him to take the warning slip, unless he thought it was absolutely against his will in which case he would not have to. He repeated acceptance of the warning did not mean a whole lot, and did not constitute an admission of guilt. He told Crowder to report to work on Monday morning and that he, Deaton, would set up a meeting in Superintendent Greene's office to have everyone present and work the matter out. Crowder expressed the thought that he did not know whether that would do any good because it would be their word against his. Deaton said, "Well, no, it's their word against ours." Crowder said he knew why they were "messing" with him, that it was because he had testified in the hearing on February 4 against the Company. Deaton replied, "No, it shouldn't be that way. It shouldn't have anything to do with it."

Deaton testified that when the warning slip with Crowder's paycheck came to him he attempted to investigate the matter. The following day, Thursday, March 13, he telephoned Crowder's home four times without success, and was not able to speak with Crowder until he came in Friday to pick up his paycheck. He explained to Crowder that the warning was not an admission of guilt,

and that Crowder had the employee grievance procedure as a recourse. Crowder then readily accepted the warning and said he wanted to proceed with his recourse.

Deaton testified that at the meeting the following Monday, March 17, attended by Vice President Bradshaw, Superintendent Greene, Veatch, Crowder, and himself, Crowder expressed his position that the warning should not have issued. However, Deaton testified that "the letter of warning stood." He further testified that in the process of the discussion, Crowder indicated that he wanted to be transferred from bay 11. After the meeting, Respondent's officials discussed the matter and decided to transfer him to bay 13. Under cross-examination by General Counsel, Deaton conceded that there is no specific requirement that an employee accept a warning. However, he said, "It is a routine matter in view of the grievance procedure." He said that Respondent has not had any experience with employees refusing to accept a warning.

Deaton testified that employees had been informed of the grievance procedure, that it is a matter of company policy in writing and that he did not know whether it had been posted.

Crowder testified that at the Monday meeting, March 17, Cason was not present. Deaton started the meeting by telling the others that Crowder was there to tell his side of the story. Crowder testified that he told them everything in its entirety including the fact Veatch told him he could accept or refuse the warning, and that if he refused "a letter" would be written up on the matter. After Crowder recited all the events, Deaton turned to Veatch and asked if that was the way it had happened. Veatch replied in the affirmative. Crowder was asked if he had anything else to say, and he told them how he had performed in bay 11. Thus, he told how he had been transferred to the bay in January prior to the February hearing, and that in order to help Respondent succeed in a welding project Vice President Bradshaw had conceived, he, Crowder, had carried flux and wire by hand and on his shoulder in order to expedite the job while other welders waited for assistance. "Then, I get a warning slip for some pennyante reason like grounds not being tight. And I told Mr. Greene, I told them all in the meeting, I said, 'You could have checked all over the job that day and you would have found countless grounds loose with nuts not tight.'" At that point Greene interrupted and said, "No, we can't say that. I know for a fact that Cason checked every ground in Bay 11, and yours was the only one that he found loose." Greene also added that Crowder was guilty of insubordination when he refused to accept the warning slip Veatch had handed him. Bradshaw said that it was very important to have the grounds tight. At that point Crowder requested that he be transferred from bay 11. They told him that the matter would be considered later, and Crowder returned to work. Later that morning he learned that his transfer request had been granted.

When asked that if he were concerned about his job as he had testified, and after having found one ground loose, why did he not then check other grounds to make double certain, Cason testified that he had checked on other grounds on days before and after this and he really did not have time to do more checking that day since it was approaching 1 or 2 p.m., the shift changes at 3:30 p.m. and supervisors come in around 2:45 p.m. Cason testified that the lunch period ended at 12 noon and that he had done paperwork in his office after that for some 45 minutes to an hour. He testified that while there was still time to check grounds if he had done that specifically, he would have had to stop his other supervisory activities.

Fitter's helper Paul Jamison, called by General Counsel, worked in bay 11. On the day Crowder received his warning for a loose ground, Jamison, who was working on the next tank from Crowder, observed Cason jerk on Crowder's grounding cables. Later that day, Cason told fitter Randy White, whom Jamison was helping, to make sure he tightened up his ground because he had just given another man a warning for it. Jamison testified that when Cason came by he did not check Jamison's ground and if he had done so he would have found that it was loose and probably would have been moved with a flick of the wrist. Jamison testified that the ground nut is supposed to be tight enough so that it will not wiggle. Although Jamison testified that he had been in the process of moving his equipment and had not had the opportunity to tighten the ground, he further explained that Cason would not have known that. After Cason left, White handed Jamison the crescent wrench and he tightened the ground and tacked it down.

Charles L. Meshell, who has been a first-class welder for 4 years, recalled the day that Crowder was sent home from work in bay 11 because of a loose ground. On that day, before Crowder was sent home, no supervisor had spoken to Meshell about his ground cable. Afterwards, Leadman Herschel Finley came and told him to make sure his ground was welded to the tank. Meshell checked the ground and discovered that it was so loose that the nut could be turned with his fingers. At no time, before or after the conversation, did Finley check Meshell's ground. Later that same afternoon, Cason came by and told him the same thing. Cason did *not* check the ground in any way.

Meshell testified that in the recent weeks before the hearing, some employees were tacking their grounds to the tank and some were not and that supervisors knew this. Moreover, when Meshell entered bay 11, Foreman Britain told him that the ground cable should not be just thrown inside the tank, that they should be welded to the tank.[65]

On consideration of the foregoing, and the entire record, I find that Cason, contrary to his denial, deliberately jerked and pulled on Crowder's ground cable until he had loosened it, and all for the purpose of creating a basis to issue him a warning. Crowder testified in a convincing fashion, as did Jamison and Meshell, and I credit them. In contrast, I was not favorably impressed by the fashion in which Respondent's witnesses testified.

[65] In its brief, Respondent argues that with respect to cables thrown into tanks, it no doubt involved tanks which were stationary and would not roll; that it is possible to get a proper ground when the tank is stationary by throwing the ground into the tank, and that Crowder was welding on a tank which rolls.

I also note from Cason's own testimony that he was so concerned about the grounding problem as to be worried about his own job security, yet after he allegedly found Crowder's ground loose, he did not take the time to check any others.[66] Moreover, even if Cason did not jerk the ground until it was loose, he personally engaged in disparity of treatment later that day involving employees White and Jamison, as did Leadman Finley regarding Meshell's ground. Under either interpretation of the facts, Respondent proceeded unlawfully against Crowder in issuing a warning to him.

With respect to Crowder's 2-day suspension, I again credit his testimony. Accordingly, I find that Veatch told him he could accept the warning or not,[67] and, in the second meeting, admittedly told Crowder that by accepting the warning he would be admitting his error. Crowder, believing himself in the right, can hardly be faulted for declining to admit what he considered a falsehood. Deaton, Greene, and Veatch admitted there is no rule requiring employees to accept warnings, yet Crowder was suspended for not accepting the warning. I credit Crowder that Deaton told him, in their meeting of Friday, March 14, that Deaton said he would not advise Crowder to come to work until after the March 17 meeting if Crowder persisted in refusing to accept the warning. I do not credit Deaton's denial.

In view of the foregoing, and the entire record, I find that the March 12 warning was violative of Section 8(a)(1), (3), and (4) of the Act.

As the March 12 warning was tainted, I find that Crowder's refusal to accept it was protected. Therefore, by suspending Crowder for engaging in a protected refusal, Respondent violated Section 8(a)(1), (3), and (4) of the Act. I do not accept Respondent's argument stated in fn. 6 at p. 62 of its brief that Crowder should not receive backpay for the full 2 days he was not at home when Deaton called.[68] Veatch did not instruct Crowder to remain by the telephone or tell him that he would be paid during his suspension. Indeed, Crowder testified that he possibly could have waited a week, or a month or more before being called and he could not stay at home just waiting.

Respondent, I find, should be ordered to expunge the warning, so inform Crowder, and pay him backpay for his suspension of 2 days.

5. Grant's written warnings of April 14 and May 30

a. *April 14*

Jimmy R. Grant testified that he began working for Respondent on September 14, 1977, that nearly all of his time has been in bay 8, and that he has been classified by Respondent as a first-class welder since March 14.

International Representative Al Washington, Jr., testified, without contradiction, that about April 5 he mailed a certified letter addressed jointly to William E. Adams, president of Respondent, and to Region 15 of the Board, on union stationery and signed by him. Some 48 employees signed their names to the letter,[69] with their names extending onto a second page above the appellation "Boilermakers In-Plant Organizing Committee." The letter reads:

> As you are aware, many of your employees have authorized the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers to represent them for the purpose of collective bargaining and other mutual aid and protection.
>
> Therefore, this union has formed an in-plant organizing committee. The following named employees of Riley-Beaird, Inc. have authorized us to inform you that they constitute the organizing committee in the Riley-Beaird Plant.
>
> As additional employees join this committee, their names will be supplied to you in the near future. They will be engaging in only peaceful and protected activity. We request that you and all officers and agents of Riley-Beaird respect their rights protected by Section 7 of the National Labor Relations Act.

Washington's testimony is undisputed that he picked up the signed return receipt at the post office on April 7. The copy in evidence (G.C. Exh. 12) also reflects the National Labor Relations Board's Region 15's date stamp of (Monday) April 7.[70] Grant testified that his name appears on page 2, fifth name down, right hand side (J. R. Grant).[71]

One week later, Foreman J. C. Wise summoned Grant to the office of General Foreman Frank Booker of bay 8. In the presence of Booker, Wise sat down and signed his name to a pink warning slip and said, "You know what this is for don't you?" When Grant inquired for what, Wise said, "I told you all over and over about washing up early." Grant, on not being given any opportunity to discuss the matter, took the warning (G.C. Exh. 15)[72] and left the office.

At the hearing, Grant explained that on the previous Friday, April 11, at or about 3:25 p.m. he went to the restroom. On leaving the restroom, he washed his hands and with a paper towel dried his face. At that time the horn blew ending the shift. Also with him washing in a similar fashion was Johnny Ray Booker. As Grant was washing his face, he looked and saw Night Supervisor Manuel Law about 50 to 75 feet away pointing in his direction. Employee Booker was standing some 3 feet from

[66] As the warnings to Evans and Bell issued in April and August *after* Crowder's warning and after the charge was filed on Crowder's warning (G.C. Exh. 1(h); Case 15-CA-7621-2), I find their persuasive character to be small indeed.

[67] As General Foreman Booker told Arnold regarding his warning of April 11.

[68] Respondent's argument borders on being frivolous.

[69] Although the letter is dated March 10, Washington explained the passage of time before mailing on the basis the signatures were being secured.

[70] Presumably this copy was furnished by General Counsel.

[71] Grant testified that the Union handbilled at Respondent's plant gate with copies of the letter about mid-March. In this Grant was in error as the evidence clearly shows that such handbilling did not occur until around May 20.

[72] Dated (Friday) April 11, the written warning, asserting violations of rules 19 and 22, states, "Refusing to follow instructions. Washing up early."

Grant. At the time, Law was speaking with General Foreman Booker while pointing in the direction of Grant. At that time the horn blew and Grant went home.

Grant also testified that Foreman Wise joined Law and Booker during the pointing demonstration. They also had clear visibility of Johnny Ray Booker who also works in bay 8. Grant testified that Johnny Ray Booker often washes up early anywhere from 3:10 to 3:25 p.m. everyday, and that General Foreman Booker had been in the vicinity when he has been doing so. Also, Grant has observed that Foreman Wise would see Johnny Ray Booker washing up early. To Grant's knowledge, Johnny Ray Booker never received any warnings for washing up early.

In addition to Johnny Ray Booker who washes up early practically daily, with obvious supervisory knowledge, Grant testified that employees Ray Whiddon, Ramsey (last name not identified), and R. L. Southern have been permitted by Supervisors Wise, Emerson, and Booker to pack up early in order to leave. Grant testified that all three of them received warnings, about 2 weeks prior to the hearing, but that they had been repeating their conduct since then without any further warning so far as Grant was aware.

On cross-examination, Grant testified that when he went into the restroom Johnny Ray Booker already was there washing his hands, and when Grant came out of the restroom to wash his own hands, Johnny Ray Booker was standing at the water fountain which is right next to the wash basin.

When asked how he knew that Whiddon, Ramsey, and Southern had washed up early, Grant testified that he began observing after he had received his own warning notice in order to ascertain whether any others were getting warnings. Between mid-April and some 2 to 3 weeks before his testimony, Grant observed Johnny Ray Booker washing up between 3:10 and 3:25 p.m. everyday. Not until 2 to 3 weeks before the hearing did the three, Whiddon, Ramsey, and Booker receive a warning.

Grant testified that he has never washed up early nor packed up early, and that Ramsey, Southern, and Johnny Ray Booker are the only ones he has seen pack up early or wash up early and that they do it most of the time. On redirect, Grant named Ray Whiddon, Ramsey, and R. L. Southern as washing up early consistently before they received a warning, and that they continue to wash up early.

Grant testified that he was making a distinction between washing his hands after leaving the restroom and washing up early. He further testified that he did not use the restroom everyday at 3:20 p.m. or so, whereas Ray Whiddon, Ramsey, and Southern were doing so everyday at that time. Grant testified that General Foreman Booker told employees at the safety meeting not to wash up early or use the restroom at the same time everyday, and Grant testified that this was the very first afternoon he had gone to the restroom at that time. General Foreman Booker was speaking and referring to the end of the shift and just before lunchtime.

In his testimony, Foreman Law confirmed that on April 11 General Foreman Booker, Foreman Wise, and he were walking down the bay considering the work to be done on the second shift. Law noticed Grant washing up and, ribbing Supervisor Booker because he is always talking about men washing up, Law pointed to Grant and said, "Look, you got a man washing up early." At that time Grant looked at them but finished washing. Law denied that anyone was washing at the same time as Grant and specifically denied that J. R. Booker was washing at the same time. On cross-examination, Law conceded that employees are permitted to wash up after leaving the restroom, but not their arms and face as Grant was doing.

Foreman J. C. Wise corroborated the version of Law and testified that when he issued the warning slip to Grant the following Monday morning for washing up early on Friday, April 11, Grant told him that he knew he was going to get a warning. Grant said he had dropped his wife off at work at Western Electric and made the comment to her that he knew he was going to get a warning because he got caught washing up early.[73]

Wise also testified that no one else was washing up at the same time as Grant, and specifically J. R. Booker was not. Wise explained that when he said that Grant was washing up, he meant that Grant was washing his hands, arms, face, and had soap up to his elbows. Wise said that he made the recommendation for the warning and that General Foreman Frank Booker made the decision that one should issue. Wise testified that at the time he gave the warning slip to Grant he had no knowledge that Grant was involved in any union activity.

On cross-examination, Wise conceded that he thought J. R. Booker was standing by the water fountain near the washup station. On further cross-examination, he admitted that he did see J. R. Booker there, getting a drink of water at the same time that the supervisors observed Grant washing up. Wise admitted that J. R. Booker did not receive a warning for being at the water fountain. He stated that nothing was said to Grant on April 11 because as soon as the whistle blew Grant left.

General Foreman Frank Booker testified that when he observed Grant at the washbasin he appeared to be "taking a bath." Booker identified Respondent's Exhibits 33 and 34 as written warnings given to employees Ray Whiddon and R. L. Southern for washing up early before lunch. Both warnings are dated July 9 and refer to violations of rule no. 19 "Washing up early before noon." They are signed by J. F. Booker, Supervisor. General Foreman Booker testified that he was responsible for issuing the warnings to Whiddon and Southern. When asked why he issued the warnings to them, he testified that he "repeatedly" told them no washing up before break, noon, or before quitting time. He denied seeing any other employee washing up early since the warning had been issued to Grant. He further denied knowledge that Grant was engaged in any activity for the Union at the time the warning was issued to him.[74]

[73] During his own cross-examination, Grant testified that he normally takes his wife to work, and he denied that he engaged in any conversation with Wise when the latter gave him the warning for washing up early.

[74] As with Grant, Booker also was confused about the date General Counsel's Exhibit 12 was distributed as a handbill, for Booker testified

Continued

Booker testified that he does not care who gets a drink of water when he needs one, and that there certainly is a difference between getting a drink of water at the water fountain and washing up early. He further testified that he would not issue a warning to someone obtaining a drink of water at the water fountain shortly before the end of the shift or before lunch. Booker testified that he never saw Wooden or Ramsey washing up early. On cross-examination he also testified that he has never stopped anyone from washing their hands after going to the restroom.

Conclusion

General Counsel alleges in paragraph 10 of the third (June 25) complaint that Respondent violated Section 8(a)(1) and (3) of the Act by issuing the April 11 warning to Grant. I conclude that General Counsel has established a *prima facie* case, and that Respondent has not shown that it would have issued the warning notwithstanding Grant's union activities. I find that Grant made a believable witness, and I credit him. I find that Respondent had knowledge of Grant's union activities by virtue of the fact that Respondent received the Union's letter on April 7, 4 days before Grant was observed washing up after leaving the restroom, and I consider this timing to be of particular significance.

While I credit Wise's uncontradicted testimony that Grant made the statement that he told his wife that he knew he was going to get a warning, I find that such remark is subject to two equally plausible explanations. One would be that which Respondent attributes to it, that is, that Wise knew he was guilty of a violation of company rules. The second and equally plausible explanation is that Grant knew he was going to be discriminated against because he had signed his name to the letter which had been sent by the Union a few days earlier.

No evidence was presented by Respondent that it had ever issued a warning for washing up early prior to the one issued Grant. Although an argument can be made that this allegation, in isolation, might be dismissable, it is clear that I must consider the entire case.

Accordingly, I find that Respondent violated Section 8(a)(1) and (3) of the Act by issuing the April 11 warning to Grant, and I shall order it to expunge the warning and notify Grant that it has done so.

b. *May 30*

Grant's May 30 written warning (G.C. Exh. 16) is for "unsatisfactory work" in violation of rule 41. The warning, dated May 30, 1980, is signed by General Foreman J. F. Booker. The factual circumstances (pin holes in a blade ring) already have been set forth above in section III,C,3(f)(4) dealing with a similar warning to Arnold (and his suspension).

Wise admitted that Grant has been a good welder for him, and I credit Grant's testimony that he reexamined the blade rings and then called Wise over to his work station and admitted to him that he had caused the pin holes.[75] Later that afternoon Wise served the warning notice on him.

Booker admitted that at the time of the warning he was aware of Grant's union activities because he had seen Grant's name on the Union's letter, copies of which had been distributed at the plant gate, but that such fact made no difference. He further testified that Grant was experienced in using a CO2 welding gun, and that he, Booker, has issued warnings to several other employees for poor workmanship.[76]

General Counsel argues that even though Grant admitted doing faulty welding, his warning nevertheless should be found violative of Section 8(a)(3) and (1) of the Act on the basis that the welding was only a pretext seized on to mask the real motive—to punish Grant for signing and assisting in distributing the letter handbill a week earlier.[77] General Counsel also points to the fact that Wise admitted Grant had just begun welding on blade rings during the week in which he received the warning, that he was just learning the job, and that welding blade rings is different from welding other products. Respondent did not depart from normal procedure, as General Counsel argues, when the blade ring was not allowed to be repaired in the "pick up" section because Quality Control Inspector Ross, called as a witness by General Counsel, testified that it is his job to reject work as bad as that and return it to the welder.

Finally, General Counsel refers to the fact that Greene testified that a welder who admits he has caused "a bunch of pin holes" and wants to do something about it would not receive a warning.[78]

The argument also could be made that Respondent issued the warning to Grant, notwithstanding the policy described by Greene, in order to add support to the warning issued Arnold.

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that it was passed out at the gate on March 10, the date shown on the letter. Later in the day it was handbilled, he found copies of it lying on his desk where people had brought them in and left them on his desk. He denied having a copy on his desk the day the written warning was issued to Grant for washing up early. I note that April 11 was 4 days after Respondent received G. C. Exh. 12.

[75] I credit Grant's version that he, on his own, went to the back of the bay and rechecked the blade ring, and I do not accept Wise's testimony suggesting that he and Grant went together.

[76] Booker's testimony regarding previous warnings for poor workmanship (which Greene also identifies as rule 41) is supported by Resp. Exh. 44. That exhibit reflects that from 1976 through 1979, bay 8 issued written warnings for violating rule 41 as follows: 1976—4; 1977—0; 1978—2; and 1979—7.

[77] Contrary to this statement in General Counsel's brief, on redirect examination Grant testified that, although he observed the handbilling, he did not personally assist. Whether he watched from a distance, or stood next to those making the distribution, is not established in the record.

[78] While Greene's answer is not entirely definitive, he seems to be saying that Respondent would not issue a formal warning (written or verbal) to an employee who not only admits his mistake but also displays a good attitude (i.e., eager to do a good job). Grant fits that criteria. While he did not ask for help then (he had earlier asked Wise to show him how to weld blade rings), he admitted his mistake and Wise, in his own testimony, apparently considered Grant a willing worker as well as a good one. Accordingly, in issuing the warning to Grant (only his second, and both are in controversy in this case), Respondent departed from its own policy as described by Superintendent Greene.

Conclusion

Under all the circumstances, including, among others, the animus shown by the findings and conclusions reported at 253 NLRB 660 (1980), and the departure from Greene's policy, I am constrained to find that Respondent indeed was substantially motivated to issue the May 30 warning to Grant because of the fact he signed the Union's letter-handbill which, as Arnold testified, was distributed about May 20.

Under *Wright Line, supra*, Respondent was required to demonstrate that it would have issued the warning notwithstanding Grant's protected activities. Here again, I am persuaded that Respondent would not have done so absent Grant's name appearing on the Union's letter-handbill. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by issuing the May 30 warning to Grant,[79] and that it should be ordered to expunge such warning and inform him personally (i.e., in addition to the notice to be posted) that it has done so.

6. Discrimination against Broden

a. *Warning of April 23*

Willie Broden, a class "A" mechanic since December 19, 1979, has worked for Respondent over 28 years (since March 1952). He reports to Mechanical-Maintenance Supervisor W. T. Palmer. Broden prefers to work the night shift (3:30 p.m. to midnight),[80] and for most of his employment prior to June 16 he did so. However, in mid-May, as Broden was preparing to leave on vacation, Palmer informed him he (Broden) was being assigned to the day shift (7 a.m. to 3:30 p.m.) effective upon his June 16 return from vacation.

The times Broden worked days in the past, the longest stretch being 3 to 4 months, occurred when he was not needed on the night shift because of a shortage of work there.

On Monday, April 28, Broden received a written warning from Supervisor Palmer.[81] Dated April 25, the warning (G.C. Exh. 21) is for "Improper Assembly of Aronson Turning Rools, causing heavy damage to unit." Palmer testified that he asked Broden to reassemble a set of power rolls which had been leaking oil. A seal had just arrived, and the power rolls already had been disassembled to replace the seal before Broden was assigned the task of reassembly. Although Broden previously had never reassembled this particular type of equipment, Palmer testified that Broden said he could do the job. Palmer stated that in reassembling the equipment, Broden failed to preset the gearbox bearings correctly, and this damaged the worm and worm gear so badly they had to be replaced.[82]

According to Palmer, the worm and worm gear were ordered immediately after this happened at an approximate cost of $1,500 to $1,600,[83] and they were thereafter installed by the maintenance people. When asked who, specifically, Palmer replied that Leadman Preston LaBorde "may have put it in." On cross-examination by union counsel, Palmer stated he could not swear that the new parts had in fact been installed, and then conceded that the rollers "could be" operating with the old worm gear. A moment later he stated, "I didn't say the leaderman put [it] in, I said he had the job done." Palmer further answered that he was not sure who did the actual work.[84]

Broden testified that on April 28, Palmer told him he had reassembled the rolls incorrectly, and that any class A mechanic should have known to preload the bearings. He then gave Broden the warning, and told him that the rolls were disassembled in the maintenance building and for him to reassemble them. Before Broden left, Palmer showed him the blueprint for the rolls. It was the first time Broden had even seen the blueprint for that kind of roll. He testified that bearings on the other rolls preload differently. The following night Palmer told Broden that he had checked the rolls. Palmer, apparently, was satisfied with the manner in which Broden had reassembled them. Broden was never thereafter told that the rolls were not working.

Broden testified that on April 21 he observed that the worm (or ring) gear was worn, but that he did not mention it to Palmer because the wear did not appear that significant. However, on receiving the warning and being told about excessive damage, Broden did point out to Palmer that the gear had been worn. Palmer's response, if any, is not described in the record. Broden further testified that in reassembling the rolls on April 28 after the warning, he noticed that the worm gear shaft was bent a little. He showed this to Palmer who apparently agreed that it was bent some. Nevertheless, Broden testified that he used these same parts, including the shaft, in reassembling the rolls the night of April 28. On cross-examination, Palmer testified that the rolls were put back into service performing the same work as before.[85]

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[79] Such violation is established in any event by virtue of my finding that a motivating factor in Respondent's decision to issue the warning to Grant was the desire to add artificial support to Arnold's warning. That is, in order to avoid revoking Arnold's warning, it also warned Grant since both worked on the blade ring. Respondent's reasoning is logically defective, for Grant's admission absolved Arnold. That Respondent persisted in the warning to Arnold surely reflects the intensity of its animus against one of the handful of employees recognized by all as one of the strongest and most visible of the Union's supporters.

[80] Broden testified that he informed Palmer of his preference a long time ago and once, specifically, in 1977.

[81] Palmer testified that he consulted with Vice President Bradshaw before he issued the warning.

[82] Broden testified that the rolls sounded all right after he reassembled them on April 21, but that they began making a "popping" noise on April 24.

[83] Respondent did not offer or produce at the hearing the requisition form or invoice described by Palmer.

[84] Broden earlier had testified that after receiving the warning he again reassembled the rollers, and that he used the old parts. Called during the Union's August 1 case, Broden testified that the Friday before his testimony he had observed the new parts in the maintenance department in a box marked "Bay 12 rolls." On cross-examination, Broden conceded that although the new worm gear looked the same as the old one, he could not say it was the same one that had been ordered. On the other hand, I note that, although Broden and Palmer testified on August 7, the hearing was not closed until August 27. Yet Respondent offered no specific evidence to rebut Broden's testimony of seeing the new parts in a box. Accordingly, I find that as of August 1 the new parts had not been installed in the rollers and that such rollers were still operating with the old parts.

[85] Palmer initially said "limited" service, but on further questioning by union counsel it is clear that the service was not "limited."

It should be noted that the instant warning was Broden's *first* written warning in his 28 years of employment with Respondent. Moreover, although Palmer at one point testified he was sure that he had given Broden some verbal warnings during the more than 20 years he had supervised him, and that the last one would have been within the last 5 years, he had to concede that not one verbal warning was reflected in any of the personnel records of Broden which Respondent had brought to the hearing. The records extended back through 1972, and Palmer stated that he believed they were all the records he had.

Palmer testified that recently, he thought since the warning to Broden, he has issued warnings to employees Frank Rivers and B. J. Jones for similar carelessness in disassembling a machine. No copies of the warnings were offered in evidence, and the incidents for which Rivers and Jones were warned are not further described. (On the other hand, General Counsel offered no evidence that Broden had made mistakes in the past without being warned or that non-union employees had made similar errors with impunity.)

Although Broden testified that during the first part of 1980, prior to his warning, he attended several union meetings, there is no evidence Respondent was aware of Broden's sympathies—until Respondent received Union Representative Washington's letter on April 7. The letter contains Broden's signature on the second page as one of the Union's members of the in-plant organizing committee.

Broden testified without contradiction that, when he assisted in distributing the letter as a handbill at the plant gate on May 20, he spoke to Supervisors Tom Britain and Harvey Reynolds, and they observed him. He further testified that about late April or early May, some 2 or 3 weeks before the May 20 handbilling,[86] Night Superintendent G. W. McKaskle came to Broden in the electric shop and asked him how the Union was going.[87] Broden answered that he did not know, and further testified:

> And he went on to tell me then that Mr. Palmer told him to watch me around there and see if I was going around amongst the men talking any union talk to them.[88]
>
> At that time I ran my hands in my shirt pocket, pulled out some church tickets that I was trying to sell to help raise money to pay for the church that we are building.
>
> He said, "Willie, you see that?"
>
> I said, "Yes, sir."
>
> He said, "People don't know what's going on."

In his own testimony, Palmer did not mention the foregoing conversation.

Conclusion

General Counsel established that on April 7 Respondent became aware of Broden's membership in the Union's in-plant organizing committee; that barely 3 weeks later Broden received the first warning (written or verbal) in his 28-year career at Respondent's plant; and that although the warning was for "heavy damage to unit," no such damage was ever shown to Broden or the existence thereof demonstrated at the hearing.[89] Where the reason given is false, as I find, it is appropriate, in light of the timing and other circumstances of the entire record,[90] to infer, as I do, that Respondent actually was motivated to issue the warning because of Broden's announced membership in the Union's in-plant organizing committee. *General Thermo, Inc.*, 250 NLRB 1260 (1980).

I further find that Respondent's *Wright Line* evidence falls short of persuading that it would have issued the warning notwithstanding Broden's union activities. In view of the falsity of the "heavy damage" reason, and Broden's unblemished record of 28 years, I find that the evidence is insufficient to establish that Respondent would have issued the warning in any event.

Accordingly, I find that Respondent, as alleged,[91] violated Section 8(a)(1) and (3) of the Act by issuing Broden the April 25 warning, and that it must be ordered to expunge such warning from his records and notify him personally that it has done so.

b. *Broden transferred June 16*

As earlier noted, effective June 16, Broden was transferred from the evening shift to the first, or day, shift.[92] Palmer testified that he transferred Broden to the day shift to pick up the slack created on routine preventative maintenance when several of the first-shift mechanics were required to spend much of their time on various new construction projects at the plant.

General Counsel argues that the transfer was made for the unlawful purpose of moving Broden from the evening shift, where he was not supervised, to the day shift where Respondent's supervisors could keep a close watch on Broden concerning his union activities.

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[86] Broden testified that Union Representative Washington, Lynn Arnold, C. M. Sanders, and Willie Hall were among those handbilling.

[87] Par. 11A(b) of the July 1 "Amendments To Consolidated Complaint" alleges the interrogation as violative of Sec. 8(a)(1) of the Act. I so find.

[88] Par. 11A(a) of the July 1 "Amendments" alleges that such conduct created the impression of surveillance of union activities in violation of Sec. 8(a)(1) of the Act. I so find.

[89] This is not to say that Respondent did not in fact order a replacement for the worm and worm gear. I do not credit Palmer, and I do not accept his testimony, that the parts would not have been ordered had it not been for Broden's mistake. I note that the worm gear already was worn and that the new parts had not been installed even as late as August 1 while the rolls had been operating on the old parts. In short, the "heavy damage" is a trumped up phrase, falsely describing what obviously amounted to very little damage, and so worded to provide an ostensibly legitimate basis for building a case against long-term employee Broden because he had aligned himself with the Union.

[90] I also note Respondent's general animus and the fact that its focus on Broden's union activities was important enough for McKaskle to interrogate him a few short days after the warning and unwittingly disclose Respondent's plans to surveil Broden's union activities.

[91] Par. 9 of the third (June 25) complaint.

[92] Pars. 9A, 13, and 15 of the July 23 "Second Amendments to Consolidated Complaint" allege the transfer to be in violation of Sec. 8(a)(3) and (1) of the Act.

Palmer testified that the transfer was "considered to be temporary," and that within the last 2 to 4 years he has moved Broden to the day shift to help out in a similar situation.

Although the record gives rise to a strong suspicion that Broden's transfer was unlawfully motivated, I find that the evidence falls short of establishing it to be so. While I do not credit Palmer except where he is independently corroborated by credited witnesses, I note that Broden previously has worked on days. Moreover, there is no evidence that the transfer is really permanent or indefinite notwithstanding Palmer's testimony that the transfer, while not explicitly temporary, is "considered to be temporary." Accordingly, I shall recommend this portion of the case be dismissed.

7. Discrimination against Willie Hall, Jr.

a. *Introduction*

(1) Hall's employment record

Fired on April 3, 1980, for poor quality of work, Willie Hall, Jr., had been one of the most prominent supporters of the Union at Respondent's plant. As in the familiar nursery rhyme, everywhere the Union was, Hall would surely be. Within 2 months after testifying against Respondent at the February hearing,[93] Hall was fired.

Hired by Respondent in August 1972, Hall had been classified as a first-class welder for 5 years. Despite his journeyman classification, Hall's employment record bears many pock marks. Indeed, in its brief (Resp. Br. p. 59), Respondent states that, "Without question, Hall was the worst welder in the plant, and he had received no less than three written warnings prior to 1980 for poor welding." The prior warnings introduced in evidence are:

> 1. April 2, 1973—Bay 8—Violated rule 41: Unsatisfactory work. "Poor welding on horizontal seam job #190456, resulting in rework. I have discussed your poor work performance with you previously."[94]
>
> 2. June 18, 1975—Bay 8—Violated rule 41: Unsatisfactory work. "The weld you put on this unit (121014-01) the appearance is very bad, you being a 1st class welder. Will have to improve or further disciplinary action will be taken."
>
> 3. April 21, 1977—Bay 8—Violated rule 19:"Refusing to follow instructions."
>
> 4. June 30, 1977—Bay 11—Violated rule 19: "You had weld rods in your hip pocket instead of your rod pouch."
>
> 5. [95]July 14, 1977—Bay 11—Violated rule 19, 31, & 41: [No description.]
>
> 6. March 2, 1978—Bay 8—Violated rule 6: Bad Workmanship. "Bad welding, Hall you have been putting in bad welds for several days, you have been talked to about this type of work. You have to improve in order to stay a welder at this plant."

Hall's work performance from March 1978 to March 1980 apparently was acceptable or better,[96] for he did not receive his seventh warning (G.C. Exh. 18), an action in issue here,[97] until March 11, 1980:

> 7. March 11, 1980—Bay 11—Violated rule 41: "Unsatisfactory Welding on U fitg. s/o 161598-03 TK-15."

The March 11 warning and other final events in Hall's employment are treated below.

(2) Complaint allegations

All allegations concerning Hall are in the second (April 28, 1980) complaint. They consist of (a) reassigning Hall on February 6 to more onerous and less desirable work; (b) issuing Hall a written warning on March 11; (c) verbally warning Hall on March 15; (d) suspending Hall on March 31 for 3 working days; and (e) discharging Hall on April 3.

(3) Hall's arthritis

For nearly 7 months prior to his February 4 testimony, Hall had been welding pads in bay 11. It is undisputed that welding pads is less physically demanding than welding fittings.[98] Pads are simply reinforcing metal plates usually welded to the outside of a railroad tank car,[99] but fittings cover openings in the tank shell. Thus, fitting welds must withstand pressure, whereas some pad welds are not subjected to pressure. (It appears that some pads are subjected to pressure.)

Hall testified that he suffers from arthritis, and that the foremen in bay 8 and 11[100] were aware of that fact.[101]

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[93] Administrative Law Judge Evans, affirmed by the Board, found in sec. II, A, of his Decision in *Riley-Beaird, Inc.*, 253 NLRB 660 (1980), that Supervisor Tom Britain unlawfully interrogated Hall in September 1979. However, in ALJD, sec. II,D,1 and 3, Administrative Law Judge Evans did not credit Hall wherein he testified that certain high officials of Respondent displayed photographs of strike violence.

[94] There follows on the form this preprinted statement: "You are hereby notified that repetition of this offense, or others, will subject you to further disciplinary action. It is hoped immediate improvement will make further action unnecessary." On this warning to Hall, the foregoing statement is *underlined*.

[95] Warning no. 5 was the subject of an unfair labor practice charge filed July 20, 1977, on Hall's behalf by the UAW in Case 15-CA-6540. The Regional Director's dismissal was affirmed by the General Counsel on October 18, 1977, on the basis: "Under all the circumstances, including the fact that the welding job in question performed by Hall did fall apart at the seams thereby causing extensive damage, and that the warning was issued only after the Company viewed Hall's personnel file, the burden of establishing that Hall was warned for other lawful reasons could not be sustained." (G.C. Exhs. 20(c) and (d)). A contemporaneous charge in Case 15-CA-6571-2, alleging a transfer of Hall on June 6, 1977, in violation of Sec. 8(a)(1) and (3), was dismissed by the Regional Director with the UAW's appeal therefrom being denied by the General Counsel on October 19, 1977 (G.C. Exhs. 20(a) and (b)).

[96] As we shall see, Supervisor Britain told Hall in early 1980 that his welding was excellent.

[97] Par. 10 of the second (April 28, 1980) complaint.

[98] In addition to the testimony of Hall and other witnesses who so testified, Supervisor Claude Veatch also confirmed this fact.

[99] Some pads are small, and some are as long as a 60-foot railroad tank car.

[100] For bay 11, Hall specifically named Tom Britain, Delmo Cason, and Claude Veatch.

[101] Veatch denied such knowledge. I credit Hall.

Indeed, in June 1979, while he was assigned to bay 8, Hall was hospitalized for 8 days because of his arthritis, and in September 1979, after having transferred to bay 11, Hall spent 14 days in the hospital. He testified without contradiction that his safety record at the company reflects these facts.

In addition, Hall testified that he receives gold shots for treatment of his arthritis. In December 1979, Foreman Cason wanted to transfer Hall to the day shift. Hall testified that he explained to General Foreman Veatch and Cason that he preferred the evening shift so he could receive his gold shot treatments from his doctor. Veatch asked Hall to work days just for December, and told Hall he could return to the second shift in January 1980. Hall agreed, and returned to the second shift as promised.

(4) Contentions of the parties

As earlier noted, Respondent contends that Hall was the "worst welder in the plant." It asks on brief, "What was the Respondent to do? Continue to allow Hall to perform substandard welding without even making an attempt to improve?"

General Counsel has alleged that the actions imposed on Hall by Respondent violated Section 8(a)(1), (3), and (4) of the Act. General Counsel argues that, to the extent Hall did perform unsatisfactorily on any jobs following his testimony at the February 4–5 hearing, it was because Respondent, knowing about Hall's arthritic condition, deliberately transferred him from welding pads to the more onerous job of welding fittings. Respondent, General Counsel argues, knew that Hall would be unable to properly weld the fittings because of his arthritis, and that Hall would thereby provide the basis for his own discharge. Such intentional assignment, General Counsel argues, was in retaliation for Hall's protected activities, and the discipline and discharge which predictably flowed from such onerous assignment were unlawful.

b. *Hall's February 6 reassignment from pads to fittings*

As noted above in subsection (3), dealing with Hall's arthritis, Hall had been welding pads in bay 11 for nearly 7 months prior to his February 4 testimony. Hall testified that when he returned to work on February 6 on completion of the hearing before Administrative Law Judge Evans, he was reassigned to bay 11, from welding pads to welding fittings. Nearly 3 weeks later, on February 25, Foreman Cason told Hall he would weld pads that night. Hall then asked him why he had been taken off pads and assigned to fittings when he returned from testifying at the hearing. Cason replied, "Because I wanted to take you off the pads." Hall then asked if his welding was bad, and Cason responded no, that he would have been the first person to tell Hall if such were the case.[102]

While I find that Cason's February 25 expression to Hall regarding the move from pads to fittings is more instructive (the abruptness supports an inference of animus) than his testimonial reason, it is to be noted that at the hearing Cason testified that he made the decision to move Hall from welding pads to welding fittings because Respondent was planning to increase its production of tank cars and there was a need for extra welders.[103] In order to obtain the additional production, Cason has to train new employees (trainees) to do the work. Cason testified that the normal practice is to refrain from assigning trainees to weld fittings because fittings are pressure-type work, whereas pads are not. Cason placed P. E. Chaney on the pad station with the trainees and assigned Hall to a fitting position because Hall had welded fittings previously. Cason specifically testified that no one replaced Hall on pad weldings, and that Charles Meshell did not replace Hall.[104] He further testified that welding on fittings was not a more difficult job, but that Respondent attempted to use only first-, second-, or third-class welders rather than trainees because fittings are pressure-type work. I do not credit Cason. His de-

[102] Indeed, Hall around late June 1979 was asked to go from his then assigned bay 8 to help out a few nights in bay 11. After Hall had welded fittings there for about a week, Supervisor Tom Britain complimented Hall on his "excellent" work, asked him to transfer to bay 11, and at the end of the first week, asked Hall to switch to welding pads because Britain needed a first-class welder on pads who did "not mind working." After Hall had spent only 1 night on pads, Britain was so pleased with Hall's "excellent" welding that he assigned Hall to pads. Britain did not testify.

[103] General Foreman Claude Veatch testified unpersuasively that he had no personal knowledge of why Hall was transferred from pads to fittings. Cason was bay foreman on the day shift, and Britain the second-shift foreman.

[104] I credit the testimony of Hall and Meshell that they swapped jobs. Since July 1979, Meshell had been welding fittings in bay 11. Employed by Respondent since 1972, and a first-class welder for 4 years, Meshell testified that he welded pads for 2 days in July 1979, but that Second Shift Foreman Britain removed him because of bad welding. Now, on February 6, an excellent pad welder, (Hall) was replaced by Meshell whom Britain had labeled as bad on pads.

Respondent contends that the record discloses that Hall and Meshell worked different shifts and that therefore Meshell could not have replaced Hall. In its brief, Respondent urges me to reverse my ruling excluding a pretrial affidavit (Resp. Exh. 48) of Hall. In the excluded affidavit, Hall stated that Meshell was "put on the 11-7 shift in Bay 11" on February 6, and P. E. Chaney was brought from the first shift and took Hall's place welding pads on the second shift. (Resp. Exh. 48, p. 2, rejected exhibit file.) Respondent offered the exhibit as impeachment after Hall had testified and left the hearing. I rejected the exhibit (offered during the rebuttal stage, and not during Hall's cross-examination), at the objections of the General Counsel and the Charging Party, on the basis that the offer came too late since Hall was not present to be given an opportunity to explain the statement. In its brief, Respondent argues that "no rule of evidence" requires an opportunity be given to explain a discrepancy between testimony and a prior recorded statement since both "stand on their own merits." Even if Hall were a full-party opponent, so that an admission normally would be received under FRE 801(d)(2), I would have had the same difficulty here from the standpoint of fundamental fairness and due process. While I consider that the two grounds just mentioned are sufficient to support my ruling, I note that FRE 613(b) states that a prior inconsistent statement of a nonparty witness is not admissible (for impeachment) "unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon . . . ."

Respondent also observes that its Exh. 27, Meshell's daily record card, reflects that Meshell worked on the first shift the entire month of February. Even if that were so, it would not seem to be controlling. There is no contention that Meshell was not switched to pads on February 6. Whether he did so on the second shift or the first shift does not seem of controlling significance. The same amount of pad work was done, first shift or second, and Hall was switched to fittings. Moreover, Superintendent Greene specifically testified that the daily record card is less reliable than the computer printout, which in turn is based on the timecards punched by the employee. Accordingly, I do not accept Resp. Exh. 27 over the testimony of Hall and Meshell.

meanor was not nearly as impressive as that of Hall and Meshell.

Although it is true that Hall had welded fittings previously, the abruptness and timing of the reassignment, coming immediately after Hall returned from the February hearing was made, I find, for the purpose of intimidating Hall, and serving as a warning to others—that union activities displease Respondent, and testifying against Respondent will not go unpunished. Thus, I find that Respondent, as alleged, violated Section 8(a)(1), (3), and (4) by transferring Hall from welding pads to welding fittings on and after February 6, 1980. Furthermore, I find that the purpose of assigning Hall to the physically more onerous job of welding fittings was twofold. First, to punish him physically, and second, to transfer him to a job where there would be a greater possibility that he would make mistakes which could provide a basis for his discharge.

While Respondent is not required to permanently assign Hall to welding pads, it is not entitled to reassign him for unlawful reasons. The remedy must be for Respondent to restore the *status quo ante*, i.e., return Hall to welding pads, if such job is in existence.

c. *March 11 written warning*

After he was assigned to welding fittings, Hall received a written warning, dated March 11, for "Unsatisfactory welding on U fitg. s/o 161598-03 TK-15." The work allegedly was performed by Hall on the evening of March 10.

Soon after Hall arrived at work the afternoon of March 11, Foreman Tom Britain came and informed him that he was wanted in the supervisor's office. On arriving in the office, and being seated, Hall observed that Foreman Delmo Cason was writing on a form. Completing his writing, Cason gave it to Hall and told him it was a warning slip for unsatisfactory welding.

Hall asked that if he was doing unsatisfactory welding on fittings, why Respondent did not put him back on pads where he had been performing satisfactorily, "because you know I suffer with arthritis and it is uncomfortable for me to weld on the fittings." Before Cason could respond, General Foreman Claude Veatch came into the office and asked Hall what his problem was. Hall replied that he was speaking to Cason. At that point, Cason told Hall, "Call me Mr. Cason."

Hall asked why he should have to say "Mr. Cason," and the latter stated, "Because I am the boss out here." Hall replied that he tendered respect to those who gave him respect, that the only titles in the plant were "leadermen, supervisors, general foreman and foremen," and that the "bosses" left when people stopped "sharecropping."

At or about that point Hall stated that he had not been shown his allegedly bad welding and he asked to see it. Veatch said that Cason and Britain did not have time to show the welding to him, and that: "Once we said you did something, that's what you did." When Hall then asked about disparity in warnings being issued, Britain replied:

> A bad welding is depending on how we look at it. Don't worry about the next man, no matter how bad it is, just worry about yourself.

Hall then returned to work.

Shortly thereafter, as Britain passed Hall at his work station, Hall again asked to see his bad welding. Britain replied that he did not have time to show Hall, and he thereupon walked away from Hall. Moments later employee Memphis Evans came over and asked Hall about the warning slip he had received. Britain returned, told Evans to return to his own work station, and then told Hall. "Hall, as long as you're in this bay, I don't want to catch you talking to no employees."[105]

Hall testified that in the past Respondent had showed employees their bad welding.[106] Indeed, when Hall was warned in 1977 for bad welding, he was shown the welding he had done which the Company claimed was substandard.

With respect to the allegedly poor welding, Veatch testified that Cason had discovered the poor welding and called Veatch over to examine it.[107] Agreeing with Cason, Veatch called Superintendent Greene to inspect the job since it appeared that a warning should be issued and a warning required Greene's approval. Greene also agreed that the welding was very poor. Veatch testified that the weld had to be gouged out and rewelded, and that such work was performed on the day shift before Hall arrived on the second shift. Veatch explained that the tank, number 15, had to be moved on through the assembly line to keep from holding up other work on the line.

Hall testified that he had not done any work on tank 15. He testified that he knew he had not because of notes he had been keeping on his work. He explained that after he testified at the February hearing, the "lawyers" suggested that he keep notes on his activities "because you never can tell what's going to happen after you testified against a person." Hall testified that he began making his notes when he returned to work on February 6, and that he made them for all of his work from his return through March.[108] He further testified that his notes[109] reflected that he had worked on tank 4 of job number 161610 on March 10 (G.C. Exh. 19, p. 10). He did not realize until later, after receiving the warning (which he

[105] Welder L. H. Williams testified that about 2 weeks after the February hearing he was told by Foreman Britain not to talk with Hall during working time, yet Britain never applied the same restriction to his conversing with other employees even though they would do so during working time in the presence of Britain.

[106] This fact is corroborated by Meshell who testified that when he was verbally warned in July by Britain for bad welding, he was shown the welding on his request.

[107] Pin holes and poor appearance in a nozzle weld. Veatch testified that Hall's welding symbol was on the work. However, no photograph was offered in evidence of the weld as was done with Resp. Exh. 29 pertaining to a weld allegedly done by Arnold. Indeed, Greene testified that a photograph was made of some other work by Hall, yet that photograph was not offered in evidence either.

[108] Hall's last day at work was on March 31, and his termination followed on April 3.

[109] The notes are contained in G.C. Exh. 19, a small notebook with an orange cover. More will be said later regarding the book's authenticity.

put in his pocket without inspecting when Cason gave it to him), that he had not in fact worked on tank 15.

As will be seen below, I find that Hall's notes (G.C. Exh. 19) are genuine, and that he carefully recorded in specific detail the job orders and tank numbers he worked on after returning to work on February 6. Respondent offered no documentary or other substantiating evidence in support of the testimony of its witnesses that Hall in fact worked on tank 15. As I find that Hall testified with a far more impressive demeanor than Respondent's witnesses, I credit Hall, and I therefore find that Respondent violated Section 8(a)(1), (3), and (4) of the Act, as alleged, by issuing the March 11 warning to Hall.

d. *March 15 verbal warning*

The record is somewhat confusing regarding the allegation of a mid-March verbal warning.[110] While it appears that supervisory personnel, including Superintendent Greene, concluded that Hall had done some bad welding on another tank, and so told Hall, there is no documentary evidence that a verbal warning issued. Veatch testified that no warning was given because Hall denied making the weld in question and Respondent could not demonstrate for certain that he had been the welder. In its brief, page 28, Respondent stated, "Hall was not given any type of warning because Hall denied that he had done the welding and there was no conclusive proof that he had in fact done it."[111]

To avoid extending this already lengthy decision, I shall forgo further discussion of the matter,[112] and I shall dismiss the allegation, paragraph 11 of the second (April 28, 1980) complaint.

e. *Suspending and discharging Hall*

(1) March 31 conference room meeting and suspension

Hall's suspension and discharge were triggered by the same event. Therefore, the two allegedly discriminatory actions[113] are combined for treatment.

On March 14, the Union filed its charge in Case 15-CA-7621 (one of the instant cases) alleging that Respondent had violated Section 8(a)(1), (3), and (4) of the Act by issuing the March 11 written warning to Hall. The return receipt, in evidence as G.C. Exh. 1(d), reflects that Respondent received the charge on March 17. A few days later, Respondent accused Hall of faulty welding, suspended Hall and then discharged him.

It is undisputed that on March 31 Hall was summoned to a meeting of a disciplinary committee in the conference room adjacent to the office of Hillman Deaton, manager of employee relations. The six[114] present at the meeting were:

William Bradshaw—Vice President of Manufacturing
Hillman Deaton—Manager of Employee Relations
George Dillard—Personnel Manager
Claude Veatch—General Foreman, Bay 11
Rupert Sepulvado—General Foreman, Bays 5, 6 and 13
Willie Hall, Jr.—Welder

All of the six-named persons testified concerning the meeting, and there is a sharp, and critical, conflict between the version given by Hall and the essentially singular version given by the five management representatives.[115]

Deaton also identified a reject report (Resp. Exh. 37) which describes the defective work allegedly done by Hall on tank 22. Dated March 25, the reject report (on quality control form 206) reflects that rail car tank 22, out of project number 161595-03, was rejected for faulty welding performed in bay 11.[116] The defective welding is described as:

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[110] Different dates are referred to in the record, and there are references to different tanks (14 and 22).

[111] Hall testified that the matter even progressed to a meeting in the office of Hillman Deaton, manager of employee relations. In the presence of Superintendent Greene and General Foreman Veatch, Deaton told Hall he would have to accept Hall's word that he had not done the welding in question since Foreman Britain did not know (was unable to demonstrate) that Hall had done it.

[112] It should be noted that in conjunction with this second mid-March event, Greene testified, without contradiction, that he told Hall he had a welding problem, and suggested that Hall transfer to the day shift in order that he could receive some retraining, either on the job or at welding school. Hall declined, saying that he had no problem with his welding and that he preferred the second shift. Greene acquiesced, but asked Hall to seek assistance from the second-shift welding technician and supervisors if he saw that he had a welding problem. Greene concluded with the admonition, "But we can no longer tolerate this type of work, and if it continues, the company is going to have to take further disciplinary action." At the hearing, Hall testified that when he accepted the offer of welding assistance in 1977 he even received a warning during such assistance, and, figuring Respondent would do the same to him this time, he declined.

[113] Hall's March 31 suspension is the subject of par. 12 of the second (April 28) complaint, and his April 3 discharge is alleged in complaint par. 13.

[114] Only Bradshaw named a seventh, Superintendent E. C. Greene. During his own testimony, Greene testified that he was on vacation the week of the meeting.

[115] In its brief, Respondent suggests what amounts to a numbers test. Thus, it argues that I must accept Respondent's version or conclude that the five conspired to commit perjury. I reject this argument. While the number of witnesses supporting one version of a factual conflict is one factor to be considered, it is not the controlling one in credibility resolutions. Were it so, an administrative law judge's responsibility would end, in this instance, after outlining the dispute and, on noting that the division of witnesses is 5 to 1, accepting as true the version of the five. Such is not the law.

[116] Hall's notebook (G.C. Exh. 19) reflects that he welded fittings on two tanks numbered 22. The first occasion was on March 14 on project number 161595-03 (the same project number noted on Resp. Exh. 37), and again on March 25 (the very date of Resp. Exh. 37) respecting project number 161610. It appears very likely that tank 22 of March 14 (project 161595-03) was the subject of the almost issued verbal warning concerning a nozzle discussed in the prior subsection of this Decision. Veatch's testimony would seem to so indicate, although he places the date later. Greene places the date about mid-March, but at one point he

Continued

> The weep hole on the repad on the U nozzle leaked when the coils were on hydro. Request repair procedure. The vessel has not been hydro tested.

The report further reflects that after the leak in the repad was repaired, that area passed the hydrostatic (water pressure) test.

Hall's account of the conference room conversation describes the confrontation in such graphic detail that it justifies repetition[117] here:

> And, the conversation started off, Hillman Deaton spoken to me, he said, "Hall, the last meeting that you and I had together, I thought we resolved everything and worked out everything together, but I find out later that you filed unfair labor practice charges against us."[118] And, he said, "What makes you think you are right in doing this?"
>
> I spoken and said, "Deaton, it's not that I think I'm right. I am doing what the law says that I have a right to do when I feel a person is harassing me."
>
> And, at that time, George Dillard spoken up. He said, "Hall, in 1977 you filed unfair labor practice charges against us and you went all the way to Washington, D.C. with it and you lost. Now, what makes you think you will win this charge?"
>
> I spoken and I said, "Dillard," I said, "what happened in 1977 doesn't mean it's going to happen in 1980." I said, "This is a new ball game."
>
> And, at that time, George Dillard spoken up, he said, "Hall, it is you who are harassing the foremen in the bay out there, by taking this little notebook of yours and going out there and writing down everything you do. We should be filing charges against you."[119]
>
> I said, "Well, George Dillard, if you think you should file charges against me, then do that."
>
> Q. Then what happened?
>
> A. And then, William Bradshaw, he spoken up. He said, "Hall, they also have unsatisfactory work that you did out there in the bay." I think he said Bay 10 or 14, I'm not sure.
>
> So, I asked him, I said, "Bradshaw, would you draw me a picture or a diagram and show me what was the bad welding I did out there?"
>
> So, he got a pencil and a piece of paper and he drew a diagram of the pad I was supposed to have welded.
>
> And, so, I smiled and looked at it and said, "This seems funny to me."
>
> He said, "What's so funny about it, that you don't understand?"
>
> I said, "You all taken me off of pads February 6th, 1980. You say this was welded in March. How could I have welded this?"
>
> And, at that time, Claude Veatch spoken up, he came over there and looked at the picture and said, "No, this is the wrong picture, a wrong diagram."[120] So, at that time, I spoken up and said, "Well, it seems as though you all can't get your story together here."

Hall testified that at one point Bradshaw told him he had done $20,000 to $30,000 worth of bad welds on a tank, and Hall replied that he could not have done that much welding, good or bad, in a whole week.

At that point Dillard advised Hall that he could leave and, after an exchange of a few more words, Hall left the conference room. After about 5 to 7 minutes the others also emerged. Deaton then called Hall into the former's office and told him that the committee had voted to send Hall home. Not knowing Sepulvado, Hall asked for the correct spelling of the foreman's name. Deaton said he did not know, and Hall, pulling out his notebook, said that he would spell it as best he could. Deaton then stated: "Hall, this is what I'm talking about. This is what is going to cost you your job." Hall asked what Deaton was referring to, and the latter replied: "That little book. You get rid of that book and the rest of it,[121] and everything could be more easy for you."

Hall said he had paid 35 cents for the book and intended to keep it since other welders and fitters have books they make notes in. Deaton then asked Hall why he persisted in his belief that the Union would succeed in coming in the plant in light of its past failures, and Hall replied, in effect, that this time the situation was different. After further conversation, Hall asked whether he was fired and Deaton told him no. As Hall prepared to leave, Deaton asked, "Hall, will you get rid of that little book?" Hall replied in the negative, and went home.

Turning now to the version of Respondent's five witnesses, I note that their essentially singular report is devoted mainly to denials that Deaton and Dillard referred to any 1977 or 1980 unfair labor practice charges, and denials that Deaton linked Hall's problem to the notebook he had.

Respecting the 1977 charges, the version of the management witnesses is that the only reference to them

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refers to tank 14. Hall identifies the March 14 tank 22 as the subject of his near verbal warning. As Hall further explained, the digits 03 are part of the job or project number on March 14 tank 22. The digits 22 following job number 161610 on March 25 designate the tank number and are not part of the job number as one might conclude. Hall explained that he did not always include the last two digits following the dash on the job number, and that such two digits in his notebook refer to the tank number.

[117] The quoted testimony is from Hall's direct examination. When asked on cross-examination to repeat his story, Hall did so in a remarkable display of memory recall. I conclude that the March 31 event remained very vivid in Hall's mind.

[118] An obvious reference to the March 14 charge relating to the written warning issued to Hall on March 11.

[119] Although Dillard's remarks are not the subject of a complaint allegation, they constitute threats in violation of Sec. 8(a)(1) of the Act, if actually made. I credit Hall, and I find an additional 8(a)(1) violation based on this fully litigated matter. *Salem Transportation, Co., Inc.*, 252 NLRB 1103 (1980).

[120] During cross-examination by the Union, Veatch conceded that Bradshaw diagramed a big wrap pad rather than the fitting reinforcement pad which allegedly leaked because of improper welding by Hall.

[121] Hall stated that he asked Deaton if the "rest of it" referred to the charges he (the Union on his behalf) had filed, but that Deaton made no comment.

came when Bradshaw asked Hall if he kept notes of all his work, and Hall replied that he had been told to do so after the 1977 charges.[122]

Bradshaw testified that he sat next to Hall at the conference and that Deaton opened the meeting by saying they were there to review Hall's bad welding work on tanks 15,[123] 14,[124] and 22.[125] Bradshaw testified[126] that he asked Hall whether he had welded on tank car 22, and that Hall pulled a little black or navy blue[127] book from his shirt pocket[128] and said he had to look at his book. Hall then confirmed that he had indeed worked on tank 22 and gave an unspecified date.[129] Bradshaw then asked Hall if he kept records of everything he did, and Hall replied, "Yes, sir, since I had some unfair labor practices turned down on me and they advised me to keep records and that is what I'm doing."

Bradshaw further testified that after Hall was dismissed from the meeting, the committee decided to send him home (suspend him) "until we could further investigate the whole aspect of all his welding." He further testified that as the committee left the conference room, Hall, waiting in an adjacent area, asked Bradshaw, not Deaton, who Sepulvado was and how to spell his name. According to Bradshaw, he spelled the name slowly for Hall who had out his notebook.[130]

Despite Bradshaw's reference to further investigation, no evidence of such was presented at the instant hearing. In fact, there is only limited evidence regarding the welding allegedly performed by Hall on tank 22. Such evidence came from Sepulvado and Veatch.

Sepulvado, general foreman over bays 5, 6, and 13, testified that tank 22 had been built in bay 11 and then sent to bay 13 where his people welded external coils to the tank. Thereafter, tank 22 was "sold to inspection" by bay 13, and hydro tested in bay 14[131] where it reportedly leaked.[132] Tank 22 was returned to bay 13 where Sepulvado's crew cut off the coils and discovered that the leak was coming from the reinforcement pad for the unloading nozzle which is welded to the tank. The leak was repaired, the coils reattached, and welded again. On cross-examination, Sepulvado testified that the welding inspector identified Hall's welding symbol.[133]

Veatch testified that Hall, concerning the near verbal warning in mid-March regarding tank 22 (job number unspecified), stated that he had welded all the fittings on the tank except the bottom unloading nozzle then under question. Indeed, Veatch said all the other fittings bore Hall's welding symbol. Accordingly, Veatch explained that when the second failure developed, a leak during a hydrostatic test of certain coils, it was known that the work had been performed by Hall. However, Veatch conceded that he was unable to say himself exactly what item on tank 22 leaked since the repair was not handled in his bay.

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[122] Of course, this does not coincide with the notebook dates which begin with February 6, 1980. Hall testified that it was during the February 1980 hearing that the "lawyers" suggested he keep notes, and he began doing so on February 6.

[123] Apparently the subject of the March 11 written warning.

[124] When called as a 611(c) witness the first day of the hearing, Superintendent Greene at one point stated that Hall had done bad welding on a tank 14. There is no other evidence in the record clarifying this reference. Greene went on to describe his talk with Hall in which he offered him welding assistance and retraining. However, the record shows that such offer pertained to Hall's allegedly faulty welding in mid-March on tank 22—for which no warning issued because it could not be demonstrated that Hall was responsible for the weld in question.

[125] It is unfortunate that the parties failed to develop a clear record regarding tank(s), 22. As already observed, Hall's notes reflect two different tank 22's on different dates in March. At the hearing, Respondent denied that Hall received a verbal warning for the mid-March welding on a tank 22 (job or project number not specified), and then on March 25, repair was requested on a tank 22 with the same job number corresponding to Hall's notes for the date of March 14.

[126] Although the meeting was on March 31, Bradshaw said he could not recall the date, and that it seemed like "four or five weeks ago." Bradshaw testified on August 7—over 4 months after the meeting.

[127] All five of Respondent's witnesses so identified the color, and further stated that the book opened from right to left. The notebook Hall identified (G.C. Exh. 19) is orange and opens from bottom to top. All five denied that G.C. Exh. 19 was the book Hall referred to. There is no dispute that the pages were loose. Bradshaw said the pages Hall had were dirty from shop sweat and frayed. Dillard said some of the pages had grease on them. On rebuttal, Hall credibly explained that there was no occasion for the pages to be greasy since he wears gloves to weld and pulled the gloves off to write. Moreover, I note that the orange cover to G.C. Exh. 19 has what appears to be a welding burn on the front, and that the pages are either sweat or water stained. Contrary to Respondent's suggestion on brief, the notebook does not have the appearance of being purchased a few days before the hearing. I find it to be the notebook Hall used.

[128] Hall testified that he was not certain whether he pulled the book from his pocket in the conference room meeting, although he was sure he did when he met later only with Deaton. It seems logical that Hall would have referred to his notes in the conference room and I find that he did remove the book from his pocket there to inspect his notes.

[129] Contrary to Veatch's testimony that Hall's weld symbol was on all (except one) of the fittings on tank 22, Hall testified that on tank 22 he welded only two fittings, the manway and the fitting next to the manway. Sepulvado identified the point of leak as the reinforcement pad of the *unloading* nozzle. As Veatch identified the unloading nozzle as being on the bottom of the tank, and Hall implied that the manway is on top of the tank, it seems evident that Hall did not weld the item which leaked (if there was a leak). Finally, in view of Veatch's testimony that the unloading nozzle leak, for which Hall almost received a verbal warning in mid-March, was repaired by replacement, and Sepulvado described the item which lead to Hall's suspension and discharge as the reinforcement pad for the unloading noozle, there is every possibility that, if there in fact was a leak, it was caused by whoever "cut the bottom out, replace[d] it." In short, there is every indication that Respondent seeks to blame a leak in the replaced bottom on Hall, when he in fact had nothing to do with the replaced part and Respondent knew very well he had nothing to do with it.

[130] The spelling which appears in G.C. Exh. 19 appears to be "Sepvead." Thus, this misspelling is more consistent with Hall's version than with Bradshaw's. Even if G.C. Exh. 19 is not the notebook Hall displayed on March 31, as Bradshaw and the others testified, it would seem that in any recopying by Hall into G.C. Exh. 19, the correct spelling of Sepulvado would appear if Bradshaw spoke slowly. I credit Hall concerning this matter.

[131] Hall testified that the work done in bay 11 is inspected and tested by air pressure in conjunction with soap and water, and if there is a leak it is repaired before the tank leaves bay 11. This raises some question regarding Respondent's later evidence that Hall's work was discovered in another bay to be the cause of a leak.

[132] The General Counsel's hearsay objection was overruled. Thus, this testimony is evidence only of the reported course of action and not proof that there in fact was a leak.

[133] It is undisputed that the welders have symbols they stamp into the work to identify it. Hall testified that his weld symbol had always been QN until sometime in March (before the March 31 meeting), but that he did not recall the new symbol since he had used it only a short time. Sepulvado did not identify the weld symbol the inspector found; the inspector did not testify; and the record does not disclose what symbol, if any, was found.

According to Deaton, the March 31 meeting was very short. He opened it by referring to tank 22[134] and told Hall that there was a problem with his welding performance. Hall replied that the only problem was that he was being harassed. Deaton said welding code specifications had to be met. Bradshaw then asked Hall if he had worked on tank 22, and Hall removed a small notebook from his pocket, thumbed through the pages, and said yes. At that point there was some discussion concerning whether it was pad or fitting work (an apparent reference to Bradshaw's diagram). Bradshaw asked Hall if he made notes about everything on the job and Hall responded, "No, but since I filed those unfair labor practices in 1977 and they were not successful, I have been told to write down job developments as they occur." Deaton testified that was about the extent of the meeting. He denied the various hearing assertions of Hall regarding Deaton's and Dillard's references to charges and to the notebook.

Deaton further testified that just after the committee left, and while he and Hall were in Deaton's office, he advised Hall that the committee had decided to suspend him during an investigation in which his case would be further reviewed. Deaton denied that there was any reference to Sepulvado, the Union, or Hall's notebook while they were in his office. He testified that his next conversation with Hall was to advise him that he had been terminated.

Dillard testified that he said nothing at the meeting. His testimony is consistent with that of the other four management representatives.

(2) April 3 discharge of Hall

Deaton testified that he could not recall the exact date the decision was made to terminate Hall, but that it was made in the 3-day period between March 31 and April 3. Dillard recalled that the discharge decision was made the day after the March 31 suspension.

Deaton testified that when Hall telephoned him on April 3 he told Hall that the committee had met and had "rendered a termination." He denied that there was any reference to Hall's notebook in this very brief conversation. Bradshaw testified that he happened to be in Deaton's office when the telephone rang. While he could not hear what the caller said, he could hear Deaton's statements. According to Bradshaw, Deaton said, "Willie, I was just fixing to call you. You have been terminated." Deaton told the caller to come get his check at anytime, and that ended the *3-to-4-second* conversation. Bradshaw denied in his testimony that Deaton said, "We voted Wednesday to terminate you." Of course, Deaton's own version comes very close to that which Bradshaw denied.

Hall testified that when he telephoned Deaton the latter said he was glad Hall had called, because he was about to call him. Deaton then said, "Well, they had a conference concerning you. They voted to terminate you." According to Hall, Deaton said that he could give up his notebook or quit. Hall said he would not give up the book and that Deaton would not get it short of a court order. Deaton then told Hall he was terminated and they then discussed the procedure for Hall to pick up his check.

One final point to be considered is Hall's testimony that when he and Deaton were conversing in Deaton's office at the time of Hall's March 31 suspension, Deaton allegedly told Hall he was with Hall 100 percent.[135] Hall told Deaton that Deaton would lie if necessary in order to save his job and feed his family, that such was just human nature. On cross-examination, Hall modified the reference to human nature to say that it depends on the individual.

(3) Attorney-client privilege

Before concluding the issues regarding Hall, it should be observed that Sepulvado admitted on cross-examination by counsel for the General Counsel that before testifying he had reviewed a list of questions with Respondent's attorney, William E. Hester III. Although Sepulvado had a copy of the list with him, he did not refer to it during his testimony. When counsel for the General Counsel moved for production, attorney Hester objected on the basis of attorney-client privilege. Counsel for the General Counsel argued that the objection should be overruled because (1) the privilege had been waived when the questions were asked; (2) the document was producible under the Jencks Act; and (3) privilege, if such, was outweighed by the interest in developing a probative record. The Union took no position. After some colloquy regarding this matter, I declined to order production under Federal Rule of Evidence 612(2) (order to produce is discretionary where notes reviewed *before* testifying), and I sustained the objection. In order to preserve the notes for examination on review, or remand, they were placed in an envelope, marked as General Counsel Exhibit 32, and the envelope sealed and marked, in part, "Sealed Exhibit."

Only counsel for the General Counsel addresses the matter in his brief where he additionally argues that the notes are not protected by the attorney-client privilege since only a communication from the client, not the reverse, is privileged. In the alternative, counsel for the General Counsel argues that in assessing credibility I should consider the fact that Sepulvado's testimony was based on a two-page list of questions he studied prior to testifying.

In adhering to my ruling, I observe that the "Report of House Committee on the Judiciary" on Fed. R. Evid. 612 states, "The Committee intends that nothing in the Rule be construed as barring the assertion of a *privilege* with respect to writings used by a witness to refresh his memory." (Emphasis supplied.) The attorney-client privilege is encompassed within Fed. R. Evid. 501. Finally, I take note of the Supreme Court's recent decision in *Upjohn Company et al.* v. *United States (IRS)*, 49 L.W. 4093 (January 13, 1981), wherein the Court essentially declared that corporations enjoy the same attorney-client

[134] Unlike Bradshaw, Deaton did not list tanks 15 and 14.

[135] Supposedly this related to a remark by Deaton that his job would be easier if the plant were unionized.

privilege as an individual.[136] No different result would obtain even if the notes are considered only the "work product" of attorney Hester. I do not consider that the notes detract from Sepulvado's credibility any more than I deem as detracting from Hall's credibility the fact he had two pretrial affidavits which he presumably reviewed before testifying.

f. *Conclusions regarding Hall's case*

Respecting the notebook question, I credit Hall's testimony that General Counsel's Exhibit 19 is the notebook he had in his possession at the March 31 conference room meeting. Hall testified in a straightforward and detailed manner and, with one exception hereafter noted, I credit his testimony completely. In contrast, Bradshaw, as noted above at various points, could not recall relevant facts. Indeed, it seems that Bradshaw has a tendency to testify in a positive way about erroneous facts. An example is the fact that Veatch admitted that Bradshaw's March 31 diagram depicted a wrap pad rather than the item allegedly welded improperly by Hall. The witnesses other than Bradshaw devoted most of their testimony about the March 31 meeting to simple denials of some of Hall's assertions rather than giving a detailed description of what was said there.

Although the entries in Hall's notebook specify job numbers and tanks he worked on, Respondent did not offer any company documents demonstrating that Hall did *not* work on the tanks reflected by the notebook entries.[137] Respondent had ample opportunity to produce rebuttal records inasmuch as there was a hearing recess between August 8 and 27 when resumed with the majority of Respondent's case. Hall had testified on August 6, the third day of the hearing.

Turning now to the March 31 meeting, I credit Hall's specific and detailed account over the rather flat descriptions offered by Respondent's witnesses. Moreover, I note that Hall testified forcefully and convincingly. Even when Hall was asked on cross-examination to repeat his story, he did so in an unhesitating manner and in an almost identical detail.[138] In short, Hall's version has the ring of truth.

The one point concerning which I do not credit Hall is his testimony regarding Deaton's supposed April 3 offer that Hall give up his notebook in exchange for returning to work. Unlike the rest of Hall's testimony, this particular point just does not "fit." Thus, it appears that before the discharge decision Deaton often assumed a kind of mediator role, or that of a grievance referee, and could conceivably make the remarks Hall attributes to him. In contrast, it is illogical that Deaton, *after* the decision to terminate had been made, would have offered Hall a chance to return to work. Particularly, this is so where, as I find, Respondent was seeking any pretext to rid itself of Hall.

On the other hand, I accept Hall's testimony that in the March 31 conference room meeting Deaton and Dillard did refer to the notebook as described by Hall, and that Deaton, later in his office, told Hall that the notebook was going to cost him his job.[139]

Respecting the basis for the March 11 warning, I find that Hall did not perform any welding on tank 15, and that Respondent attributed any defective welding on the tank to Hall as a pretext to build a current record against him because of his union activities and his February testimony.[140]

I further find and conclude that Respondent sought to attribute bad welding on tank 22 to Hall for the same unlawful reasons, and that it thereby violated Section 8(a)(3) and (4) by suspending Hall on March 31 and discharging him on April 3.

Considering now Respondent's *Wright Line*[141] burden, I find that although the General Counsel has shown that unlawful considerations were motivating factors in Hall's reassignment, warning, suspension, and discharge, Respondent has failed to demonstrate affirmatively that it would have reassigned (to fittings), warned, suspended, and discharged Hall notwithstanding his protected conduct. Some of Respondent's failure in this regard is the rather confusing evidence regarding tank 22. Evidentiary references to the tank were usually not connected to a job number, and Respondent offered unsatisfactory evidence that Hall in fact welded the item which leaked.[142] Indeed, there is only hearsay evidence that there was a leak in fact, and that was admitted over the General Counsel's objection merely to show a course of action (and why Respondent took the action it did). Sepulvado's testimony that his bay employees repaired the area which leaked is not competent evidence of a leak in fact since only the inspector conducting the hydrostatic test

[136] Thus, it is immaterial that Sepulvado is a line supervisor and not member of a managerial "control group." As an agent with relevant knowledge, communications with Sepulvado are protected by the attorney-client privilege.

[137] Resp. Exh. 18, relating to Arnold's case, is a computer printout of work performed on a specified project, and Superintendent Greene testified that there are computer printouts which are made by the accounting department for all jobs. Moreover, Resp. Exh. 47, also introduced regarding Arnold's case, describes the project number and the number of tanks. Hence, I conclude that there were records available which Respondent could have offered had it chosen to do so, and I draw an adverse inference from its failure to do so.

[138] Moreover, Hall's version not only is internally consistent, it is consistent with independent facts: the 1977 and 1980 unfair labor practice charges and the fact that he did keep a notebook as Respondent well knew in advance of the meeting.

[139] This remark simply reflected that the notebook symbolized Hall's protected union and testimonial activities. Moreover, as Hall's testimony reflects, Deaton would pretend to be a kind of confidant to Hall whenever they were alone in Deaton's office. This, then, explains why Deaton would tell Hall that the notebook would cost him his job.

[140] Hall's last pre-February warning came in March 1978. His pre-February record has several poor performance warnings, including one which underlines some pointed language about further discipline. Nevertheless, one must ask why Respondent retained Hall in the years 1973 to March 1978 if it considered him a poor welder. One must also wonder why Hall, whose performance was warning free between 1978 and March 11, 1980, all of a sudden could do nothing right.

[141] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[142] The welding inspector who, according to Veatch, identified Hall's weld symbol was not called to testify. Moreover, Veatch's testimony is of questionable accuracy since Hall testified that his weld symbol was changed in March. Although Respondent was quick to offer photographs of other work in question in this case, none was offered of the item in instant dispute—even though Greene conceded that some were made of tank 22 in mid-March. In short, Respondent's evidence is far too skimpy and garbled.

could observe a leak. Sepulvado's crew simply repaired the area a leak was presumed to flow from.

Accordingly, as I find that Respondent has not carried its *Wright Line* burden, I shall order that it expunge the March 11 warning from Hall's employment record, revoke the March 31 suspension and April 3 discharge, reinstate Hall to welding pads (if such job is in existence), and make him whole.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(a)(1) of the Act by unlawfully interrogating employees about their protected activities, by giving them the impression of unlawful surveillance, and by illegally threatening them because of their protected activities.
4. Respondent has violated Section 8(a)(3), (4), and (1) of the Act by assigning employees to more onerous and less desirable work, subjecting them to stricter supervision, requiring them to adhere more closely to plant rules, restricting their communications with their fellow employees, citing them with unexcused absences, and by warning, transferring, and discharging employees.
5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. Respondent did not issue Willie Hall, Jr., a verbal warning on or about March 15, 1980, and therefore did not violate Section 8(a)(3) and (1) as alleged.
7. Respondent did not violate Section 8(a)(3) and (1) of the Act by transferring Willie D. Broden from the second shift to the first shift on or about June 16, 1980.

THE REMEDY

In view of the foregoing, I shall recommend that Respondent be ordered to cease and desist from its illegal conduct, and to (1) expunge the unexcused absences charged to Cecil M. Sanders for February 4 and 5, 1980, and inform him it has done so; (2) expunge the warnings issued to Lynn A. Arnold, Willie D. Broden, Willie D. Crowder, J. R. Grant, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper and notify them personally that it has done so; (3) retransfer Arnold, Sanders, and Stamper to their former positions in bay 5, which they enjoyed prior to their discriminatory reassignments and transfers in February 1980 or, if such jobs no longer exist, to substantially equivalent jobs; (4) reinstate Hall to his second-shift position of welding pads in bay 11 which he occupied prior to his February-April discriminatory reassignment, suspension, and discharge, or, if such job no longer exists, to a substantially equivalent position; and (5) make whole, with interest, Arnold, Crowder, and Hall for any loss of earnings they may have suffered by reason of the discriminatory suspensions and discharge taken against them. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[143]

The Respondent, Riley-Beaird, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union activities and that of other employees.

(b) Unlawfully interrogating employees concerning charges they have filed with the Board.

(c) Creating the impression of surveillance of employees' union activities by telling them that a supervisor has been instructed to observe their union activities.

(d) Unlawfully threatening employees with filing of charges against them because they make and keep notes concerning their work and events at work.

(e) Illegally threatening employees with discharge because they make and keep notes concerning their work and events at work.

(f) Unlawfully charging employees with unexcused absences to penalize them for being absent from work in order to give testimony at a Board proceeding.

(g) Assigning employees to more onerous and less desirable work, subjecting them to stricter supervision, requiring them to adhere more closely to plant rules, and restricting them in communicating with their fellow employees because they support the Union, or any other labor organization,[144] or because they have filed charges or given testimony under the Act.

(h) Unlawfully issuing warning to employees.

(i) Unlawfully reassigning and transferring employees.

(j) Illegally suspending and discharging employees.

(k) Discouraging employees from membership in International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organizations, or discouraging employees from filing charges or giving testimony under the Act, by unlawfully reassigning, warning, suspending, or discharging any of its employees, or discriminating against them in any other manner with respect to their hire or tenure of employment in violation of Section 8(a)(3) and (4) of the Act.

(l) In any like or related manner interferring with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to act together for the purpose of collective bargaining or of

[143] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[144] The phrase "or any other labor organization" is appropriately included. *Elk Brand Manufacturing Company*, 253 NLRB 1038 (1981).

other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer Lynn A. Arnold, Willie Hall, Jr., Cecil M. Sanders, and Thomas B. Stamper immediate and full reinstatement to their former positions of employment or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make whole Lynn A. Arnold, Willie D. Crowder, and Willie Hall, Jr., for any loss of pay they may have suffered by reason of Respondent's discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Remove from its records and destroy all copies of, and references to, the warnings issued as shown below:

Lynn A. Arnold	March 6, 1980
	April 11, 1980
	May 29, 1980
Willie D. Broden	April 25, 1980
Willie D. Crowder	March 12, 1980
J. R. Grant	April 11, 1980
	May 30, 1980
Willie Hall, Jr.	March 11, 1980
Cecil M. Sanders	February 4 and 5, 1980, unexcused absences
	July 22, 1980
Thomas B. Stamper	February 25, 1980

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Shreveport, Louisiana, plant signed and dated copies of the attached notice marked "Appendix."[145] Copies of said notice, on forms provided by the Regional Director for Region 15, and after being duly signed and dated by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaints be dismissed insofar as they allege violations not specifically found herein.

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[145] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."